Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

RONALD WILLIAMS

Petitioner,

vs.

CITY OF LOS ANGELES

Respondent.

Petition For Writ of Certiorari To the United States Court of Appeals For the Ninth Circuit

THE APPENDIX IN SUPPORT THEREOF

Ronald Williams
Petitioner In Pro Se
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Appendix A - Opinion of the United States District Court of Appeals for the Ninth Circuit

Filed Jan 20, 1998, Cathy Catterson, U.S. Court of Appeal

RONALD WILLIAMS No. 97-55070

Plaintiff - Appellant, DC CV-93-2873 KMW

v.

CITY OF LOS ANGELES MEMORANDUM

Defendant - Appellee.

Appeal from the United States District Court for the Central District of California . .
Kim McLane Wardlaw, District Judge Presiding

Submitted January 12, 1998

Before: BROWNING, KLEINFELD, AND THOMAS, Circuit Judges

I.

Ronald Williams appeals from the district court's dismissal of his complaint. We affirm.

II.

The facts are known to the parties. We will repeat them here only as necessary.

III

This court reviews de novo a district court's dismissal of a plaintiff's complaint pursuant to Fed. R. Civ. P. 12 (b) (6). Cohen v. Stratosphere Corp., 115 F.3d 695, 700 (9th Cir. 1997)

Williams argued that Los Angeles City Charter section

190.111 (A) (1) was unconstitutional as applied to him. However, he has already had a full and fair opportunity to litigate his cause of action related to his employment status with the Los Angeles Police Department. His arguments to the district court echoed the arguments that he has previously made before the courts of California. Moreover, Williams sought reinstatement to his former position with the LAPD in both his federal and state complaints. Thus, the district court correctly determined that res judicata and the Full Faith and Credit Act prevented it from rehearing Williams' complaint. See Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984).

Nevertheless, Williams insisted that the California Court of Appeals' ultimate resolution of his complaint should have no preclusive effect because that decision misconstrued the U.S. Constitution and federal law. Even assuming for the moment that the state court decision was flawed, Williams may not ask the district court to pass on the validity of that decision. In civil cases, lower federal courts "may not serve as appellate tribunals to review errors allegedly committed by state courts." MacKay v. Pfeil, 827 F.2d 540, 543 (9th Cir. 1987); see also Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 141, 149-50 (1816). The United States Supreme Court is the proper court in which to obtain such review. 28 U.S.C. 1257 (1993). This jurisdictional limit "applies even when the challenge to the state court decision involves federal constitutional issues." Worldwide Church of God v. McNair, 805 F.2d 888, 891 (9th Cir. 1986). The district court therefore lacked jurisdiction to hear Williams' complaint.

IV.

This court reviews under an abuse of discretion standard a denial of a motion for entry of default judgment. Pau v. Yosemite Park and Curry Co., 928 F.2d 880, 885 (9th Cir. 1991). The district court denied Williams' motion because (1) the defendant made an adequate showing of excusable neglect, (2) neither party was prejudiced by the

delay in this action, and (3) the defendant had a meritorious defense. We affirm because the district court's decision was not capricious.

V.

This court reviews under an abuse of discretion standard a district court's refusal to disqualify a sitting judge under 28 U.S.C. 144. Hamid v. Price Waterhouse, 51 F.3d 1411, 1414 (9th Cir. 1995). Williams' allegation that the trial judge was motivated by racial animus was wholly unsupported. Williams also did not present any evidence to support his assertion that the trial judge was influenced by her marriage to a city official. Indeed, the relevant hearing transcripts indicate that the trial judge accorded Williams, a pro per plaintiff, considerable leeway. Thus, the district court's refusal to grant Williams' motion to disqualify the trial judge was not an abuse of discretion. Similarly, the trial judge did not err in failing to recuse herself.

AFFIRMED

Appendix B - Judgment and Order Granting Defendant's Motion To Dismiss and Dismissal With Prejudice

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD WILLIAMS, CASE NO. CV-93-2873 KMW

Plaintiff JUDGMENT

Vs. **[Filed DEC. 27, 1996, Clerk U.S. District Court, Central District of California, By Deputy]**

CITY OF LOS ANGELES,

[Entered, Clerk, U.S. District

Defendant. **.Court, DEC. 30, 1996]**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to the memorandum of decision and order filed herewith, the court grants defendant's motion to dismiss with respect to all causes of action.

The Court orders that such judgment be entered.

DATED: 12-26-96 "S/J"

Kim McLane Wardlaw
United States District Judge

[ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DISMISSAL WITH PREJUDICE]

The Court has considered Defendant's Motion to Dismiss Complaint Pursuant to FRCP Rule 12(b)(6), and has read and reviewed all the materials filed by the parties in connection with the Motion. Based upon all briefs, exhibits, declarations, and other evidence submitted by the parties, as well as all filed and records in this case and oral arguments on this Motion, the Court hereby **GRANTS** Defendant's Motion to Dismiss with prejudice.

1. BACKGROUND

The merits of plaintiff's claims have been litigated extensively in both federal and California State Courts. These cases arise from Williams' dismissal for misconduct from the Los Angeles Police Department in November 1987. In August 1989 plaintiff Ronald Williams ("Williams") had served twenty years with the Los Angeles Police Department and held the rank of Lieutenant II. Following a hearing by the Department Board of Rights, Williams was found guilty of three charges stemming from alleged sexual misconduct: (1) failing to respond accurately to questions about the allegation; (2) specifically denying having exposed two minors to an explicit film; and (3) failing to return two films to the store where he had rented them.

On **October 19, 1987,** former Police Chief Darryl Gates removed Williams from service effective **August 5, 1987.** On **November 5, 1987,** Williams voluntarily retired by applying to the City of Los Angeles ("the City") pension board for service retirement effective **August 1, 1987.** On **November 16, 1987,** Williams filed his first suit in California state court seeking to overturn his removal ("Williams 1"). On **December 10, 1987,** the pension board granted Williams' retirement effective **August 1, 1987;** shortly thereafter his monthly pension payments began.

Williams ultimately prevailed in his litigation to decrease the penalty for his misconduct from dismissal to suspension. In February 1988, the California state trial court issued a writ of mandate ordering the Police Board of Rights ("the Board") to reconsider the penalty. Upon reconsideration, the Board again recommended dismissal. In May 1988, the trial Court issued its second writ of mandate compelling the Board to reconsider the penalty at less than dismissal. About that time, the City Attorney

representing the City in this action became aware of Williams' voluntary retirement from the police force. The City filed a notice of appeal from the second writ of mandate contending that Los Angeles City Charter 190.111(A)(1) prohibited reinstatement of an officer who had voluntarily retired at the rank of Lieutenant or above. Nevertheless, on August 10, 1989, the California Court of Appeal ruled in favor of Williams, affirming the second writ of mandate. Pursuant to the writ of mandate, the Board reconsidered the penalty and recommended a 30-day suspension. However, when Williams sought reinstatement, the City refused to reinstate him on the basis of City Charter 190.111(A)(1).

Williams then initiated a second state court proceeding ("Williams II"), filing an amended writ of mandate seeking recision of his voluntary retirement on the grounds of mistake and reinstatement. The trial court held Williams could rescind the retirement on the basis of mistake and ordered reinstatement. The Court of Appeal reversed, finding that (1) the City Charter prevented Williams' return to duty since he elected to retire rather than withdraw his pension contributions; (2) Williams erred unilaterally in his belief that retirement did not harm his chances for later reinstatement; and (3) the City did not induce him to retire voluntarily. Williams v. City of Los Angeles, 229 Cal.App.3d 1627, pet. for rev. denied (1991).

In March of 1990, while the state court action was pending, Williams initiated suit in federal court for the Central District of California, CV 90-1252 (AWT) ("Williams III"), alleging racial discrimination. The district court, the Hon. A. Wallace Tashima presiding, stayed the action until the state court proceedings were concluded on May 10, 1991. In August 1992, Judge Tashima dismissed the 1985 claim. Two years later, in July of 1994, the Court granted summary judgment

against Williams on the remainder of the claims. The Ninth Circuit affirmed the District Court's judgment on March 25, 1996, concluding that Williams had been provided a full and fair opportunity to present his claim and had nonetheless "failed to articulate any genuine issue of material fact as to his allegation that the defendants acted with racial animus and violated 42 U.S.C 1983 and 42 U.S.C. 2000e et seq." Memorandum of Decision, No. 94-56250 (9th Cir. March 25, 1996).

On May 18, 1993, Williams filed the instant complaint ("Complaint") in pro per against defendant City of Los Angeles ('the City"), seeking declaratory and injunctive relief from this Court ("Williams IV"). The Complaint requests a declaration resolving that:

> (1) plaintiff as having been wrongfully discharged, and under circumstances highly probative of racial employment discrimination; (2) that the State Court's ultimate decision of Plaintiff's retirement as unconstitutional; (3) Defendants are without legal justification to interpose in the civil rights action, the inconsistent and alternating defenses of Plaintiff's discharge, and that he had also retired, and (4) further establish, particularly from the July 10, 1992 motion to dismiss the federal Complaint action which sought dismissal of the Title VII claims from the results of the May 10, 1991 State Appeal decision was an abuse of the federal court process: it sought use of the waiver clause of the City's pension ordinance plan, falsely Raised by Defendants and unconstitutionally constructed and enforced by the State Court, as legal justification to further waive Plaintiff's right to maintain the action under Title VII.

The City failed to answer or otherwise respond to the Complaint. On August 2, 1993, the clerk entered default against the City. On the same date, the clerk rejected a request by Williams for entry of default judgment, and advised Williams that such relief could only be granted upon a formally noticed motion. On August 6, 1993, the Court issued a Notice of Discrepancy and Order rejecting Williams' request for default judgment. On February 1, 1996, this case was reassigned by order of the Chief Judge from the calendar of Judge Tashima to the calendar of Judge Wardlaw.

On April 1, 1996, this Court issued an Order to Show Cause ("OSC") Regarding Dismissal for Lack of Prosecution and scheduled a hearing on the OSC for April 15, 1996. The matter was heard on that date by Judge Lourdes Baird who did not rule, but took the matter under submission. After a review of the hearing transcript, as well as all pleadings, this Court ordered that on or before May 31, 1996, Williams move the Court for entry of default judgment or other wise proceed with the prosecution of this action. The Court noted that if Williams continued to fail to prosecute this action, the Court would again consider dismissing the case, upon motion by the City.

On May 28, 1996, Williams moved for entry of default judgment. The City opposed the motion and requested that the Court set aside entry of default. The Court on June 27, 1996, filed an order setting aside the entry of default, denying the motion for default judgment, and directing the City to answer or otherwise respond to the Complaint within 20 days of June 26, 1996.

On July 15, 1996, the Plaintiff filed a Motion for Order of Court Recusing Itself. This motion was heard by Judge A. Andrew Hauk.

On July 16, 1996 the City responded to the Complaint by moving for its dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6), contending that the complaint fails to state a claim upon which relief may be granted because (1) abstention is appropriate under the doctrine of Younger v.

Harris; (2) the Complaint fails to offer any statutory basis for convening a three-judge district court panel; (3) the complaint asks this federal court to deny full faith and credit to a decision of the highest court of a State; and (4) Williams should have, but did not, exercise his rights to appeal the decisions of which he complains here.

II. Standards Government Motion

A. Legal Standard

A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the complaint. Read 12(b)(6) must be read in conjunction with Rule 8(a) which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure 1356 (1990). Therefore, a court must not dismiss a complaint for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Moore v. City of Costa Mesa, 886 F.2d 260, 262 (9th Cir. 1989) (quoting Conley v. Gibson), cert. Denied, 496 U.S. 906 (1990); see Haddock v. Board of Dental Examiners of California, 777 F.2d 462 (9th Cir. 1985) (complaint should not be dismissed if it states a claim under any legal theory, even if the plaintiff erroneously relies on a different legal theory). In other words, a Rule 12(b)(6) dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Ballistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988).

A court must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from them. Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987); NL Industries, Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986); see also Russell v. Landrieu, 621 F.2d 1037, 1039 (9th Cir. 1980) (finding that the complaint must be read in the light most favorable to the plaintiff). However, a

court need not accept as true unreasonable inferences or conclusory legal allegations case in the form of factual allegations. Western Min. Council v. Watt, 643 F.2d 618, 624 (9th Cir.), cert. Denied, 454 U.S. 1031 (1981). The court may consider material submitted with the complaint for the purposes of a motion to dismiss. Hal Roach Studios v. Richard Feiner & Co., 886 F.2d 1542, 1555 (9th Cir. 1990). Matters properly the subject of judicial notice may also be considered by the court in deciding a motion to dismiss without converting the motion into a Rule 56 motion for summary judgment. Schwarzer, Tashima, and Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial (The Rutter Group 1995) 9:212.2 (citing MGIC Indem Corp. v. Weisman, 802 F.2d 500, 504 (9th Cir. 1986); Henson v. CSC Credit Servs. 29 F.3d 280, 284 (7th Cir. 1994).

For all of these reasons, it is only under extraordinary circumstances that dismissal is proper under Rule 12(b)(6). United States v. City of Redwood City, 640 F.2d 963, 966 (9th Cir. 1981).

III. Analysis

A. Legal Standard

1. Full Faith and Credit of State Court Actions[2]

Under the Full Faith and Credit Act, 28 U.S.C. 1738, a federal court must "give a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." Migra v. Warren City School Dist. Bd. of Education, 465 U.S. 75, 81 (1984); see also Turnbow v. Pacifica Mutual Life Insurance Co., 934 F.2d 1100, 1103 (9th Cir. 1991) ("[f]ederal district courts, as courts of original jurisdiction, may not serve as appellate tribinals to review errors allegedly committed by state courts" (citations and quotations omitted). This is true, even if the

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[2] The Court need not reach the abstension issue because it finds that the Full Faith and Credit Act and standard principles of res judicata bar Williams' previously litigated claims.

state court decisions was erroneous. See Federated Dept. Stores v. Mottie, 452 U.S. 394, 398 (1981) (holding that "[a] judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another cause of action upon the same cause of action") (quotations omitted). This is also true, even when the constitutionality of the underlying decision is challenged. See Migra v. Warren City Sch. Dist. Bd. of Education, 465 U.S. 75, 82 (1994) (stating that "[n]othing abot the preclusive effect of state-court judgments.") (quotations omitted)

2. Res Judicata

The doctrine of res judicata is closely related to the theory of full faith and credit. Res judicata is a judicial doctrine designed to accord finality to judgments and prevent endless litigation. California state law governs the issue of whether a state court judgment precludes the right to proceed in federal court. Sanchez v. City of Santa Ana, 936 F.2d 1027, 1035 (9th Cir. 1990), cert. Denied 502 U.S. 957 (1991). As a general rule, in California, "a single cause of action cannot be split and made the basis for several suits." Ferraro v. William Lyles Const. Co., 102 Cal. App. 3d 33, 41 (1980).

California applies a "primary rights" theory to define what constitutes a single cause of action and determine whether subsequent claims are barred by res judicata. Slater v. Blackwood, 15 Cal. 3d 791, 795 (1975)(stating that "even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief"); Agarwal v. Johnson, 25 Cal. 3d 932 (1979) (explaining that "there is only a single cause of action for the invasion of one primary right . . . But the significant factor is the harm suffered, that the same facts are involved in both suits is not conclusive"); Sawyer v. First City Financial Corp., Ltd., 124 Cal. App. 3d 390, 399 (1981) (explaining that "the primary right to be free from personal injury has been construed as to embrace all theories of tort which might have given rise to the injury"). In other words, if a court concludes

that the same primary right is involved in two actions, the prior judgment serves to bar consideration of all matters actually raised in the first action, and also all matters which could have been raised at that time. Eichman v. Fotomat Corp., 147 Cal. App. 3d 1170, 1175 (1983).

> Under California Law, res judicata applies when:
>
> (1) there was a final judgment on the merits: (2) the claims were part of a cause of action that was litigated and decided, or that might have been litigated, in the earlier proceeding; and (3) the parties against whom the principle is invoked were parties or in privity with a party to the prior adjudication.

Los Angeles Unified School District v. Los Angeles Branch NAACP, 714 F.2d 935, 939 (9th Cir. 1983) cert. Denied, 474 U.S. 919 (1985).

Federal criteria are used to determine the res judicata effect of the decisions of the district court and the Ninth Circuit. The federal test involves four elements:

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Constantini v. Trans World Airlines, 681 F.2d 1199, 1201 (9th Cir. 1982).

B. The Full Faith and Credit Act and Res Judicata Principles Bar Relitigation of Williams' Claims.

Williams attempts to attack the judgments of the California and federal courts through 28 U.S.C. 2201.[1]

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[1] 28 U.S.C. 2201(a) provides: "[I]n a case of actual controversy with its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of

Williams claims he is entltled to declaratory and injunctive relief, invoking a district court panel of three judges pursuant to 28 U.S.C. 2284, [2] to declare unconstitutional the decision by the Court of Appeals for the Second Appellate District of the State of California Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (1991), pet. for rev. denied, August 1, 1991 ("Williams 1"), and to enjoin its further enforcement. The gravamen of Williams' Complaint in this action is that he was wrongfully discharged and the discharge was racially motivated.[3] However, all of Williams' claims have been litigated previously either in state or federal court or both. The principles of full faith and credit and res judicata thus preclude relitigation of Williams before this Court.

1. The Full Faith and Credit Act Prevents This Court from Disturbing the Ruling of the California Court of Appeal.

This Court is required by 28 U.S.C. 1738, to give full faith and credit to the actions of the California courts. The Full Faith and Credit Act gives force to state claims to which res judicata principles apply. Williams first two claims relating to his discharge and the interpretation of City Charter 190.111(a)(1) were litigated in Williams I & II. Williams is

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any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such".

[2] 28 U.S.C. 2284 provides: "[a] district court of three judges shall be convened when otherwise required by an Act of Congress, or when an action is filed challenging the constitutionally of the apportionment of congressional districts or the apportionment of any statewide legislative body."

[3] In this action, Williams seeks a declaratory judgment resolving that (1) plaintiff has been wrongfully discharged under circumstances highly probative of racial employment discrimination; (2) that the State court's decision regarding plaintiff's retirement is unconstitutional; (3) defendants have interposed inconsistent defenses in the Civil Rights action; and (4) that defendant's motion to dismiss in Williams II was an abuse of the federal court process. Complaint #9.

asking this Court to rule that the decision in Williams I reinstating him is correct and that the decision in Williams II should be declared unconstitutional. However, Williams has provided no basis for this Court to endorse, interfere with or invalidate the decisions of the California Court of Appeal.

To provide the relief Williams requests, this Court would be required to provide its own interpretation of City Charter 190.111 as it relates to Williams' retirement and reinstatement. However, this Court is barred by the decision of the California Court of Appeal in Williams II from taking such an action. All three of the elements of res judicata have been met. First, the California Court of Appeal in Williams II reached final judgment on the merits. Second, the claims presented in the instant action are identical to the claims presented in Williams II. The Williams II court determined that, based on his voluntary retirement, Williams was not entitled to be reinstated to the Los Angeles Police Department. Third, the parties in Williams II were Williams as plaintiff and the City and Darryl Gates as defendants, almost identical to and inclusive of the parties in this action.

2. The Doctrine of Res Judicata Precludes this Court from Disturbing the Ruling of The Ninth Circuit Court of Appeals

Williams' first claim relating to the alleged discriminatory acts of the City were litigated in Williams III. In Williams III the Court determined that Williams had failed to allege actionable conduct of discrimination under [section] 1983 and Title VII. All four of the federal criteria for res judicata are satisfied: (1) the rights and interests of the City established in Williams III (that the City did not discriminate against Williams) would be destroyed by this action; (2) substantially the same evidence would be presented in this case; (3) both suits involve infringement of the same right - Williams' right to employment by the City; and (4) both suits arise out of the same nucleus of facts - Williams' dismissal by the City. Williams admitted that the issues and the parties were the same as the present case during a hearing on April

15, 1996. . . . . As Williams has stated, the only difference between this lawsuit and the lawsuit in Williams III is that he is proceeding under a different theory of recovery. However, res judicata applies even where the plaintiff pleads a different theory of recovery. Clark v. Yosemite Community College Dist., 785 F.2d 781, 786 (9th Cir. 1986) (holding that "the same primary right is at stake even if. . .the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery") If Williams disagreed with the decision of the Ninth Circuit, Williams should have sought review of its decision by the United States Supreme Court. This Court is without power or authority to alter that judgment.

Similarly, Williams' third and fourth claims contending that the City interposed inconsistent defenses and the City's motion to dismiss was an abuse of the federal court process should have been raised in the District Court action in Williams III or to the Ninth Circuit on Williams' appeal.

3. Declaratory Judgment By This Court Would Not Be Proper

The declaratory judgment act is not a proper vehicle for Williams to pursue his claims. Instead of seeking review by the Supreme Court, Williams is attempting to use the declaratory judgment relief act in a way that was never intended. Williams relies on Dombrowski v Pfister, 380 U.S. 479 (1965) and Peters v. Hobby, 349 U.S. 331, to support this effort. Both cases are inapposite. Neither Dombrowski nor Peters suggests that a district court has the power to overturn, set aside or otherwise deny full faith and credit to a final action of a state court or another federal court. In Dombroski, the plaintiff sought an injunction against state officials to stop them from enforcing a criminal statute which, they claimed, violated their civil rights. After a three-judge district court panel dismissed the complaint, the Supreme Court held that the district court's abstention was inappropriate where "a substantial loss or impairment of freedoms of expression will occur if appellants must await the state court's disposition and

ultimate review in [the Supreme Court] of any adverse determination." Id. at 485-486. Unlike the plaintiffs in Dombrowski, Williams is not seeking to enjoin any actual or threatened state prosecution. He has failed to demonstrate any reason why his case is any different than the hundreds of cases determined every day for which review in the Supreme Court of the United States is the only constitutional means of appellate review.

The holding in Peters is also inapplicable to this case. Peters involved district court review of a federal agency finding. Nothing in Peters suggests that the administrative law principles they discussed apply to the final judgment of a state or federal court.

Finally, Williams proposes that a three-judge panel be convened to grant him the declaratory and injunctive relief he is seeking. There is no basis for convening such a panel in this case. The statutory basis cited by Williams allows for the convening of such a panel when "the apportionment of congressional districts or the apportionment of any statewide legislative body " is challenged. 28 U.S.C. 2284. Williams is not challenging either.

IV. Conclusion

Williams' claims are barred by the doctrine of res judicata and the Full Faith and Credit Act, 28 U.S.C. 1738, which requires this Court to "give a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." Accordingly, the Court hereby **GRANTS** with prejudice the Motion to Dismiss pursuant to Rule 12(b)(6). It is ordered that the complaint be dismissed with prejudice and judgment entered accordingly.

IT IS SO ORDERED

DATED: 12-26-96

"S/J"

Kim McLane Wardlaw
United States District Judge

APPENDIX C - ORDER OF DISTRICT COURT DENYING MOTION FOR RECUSAL

United States District Court
Central District of California

[Filed, Clerk U.S. District Court JUL. 26, 1999]

RONALD WILLIAMS CV 93-2873 KMW
Plaintiff,

v. ORDER DENYING PLAINTIFF'S MOTION

CITY OF LOS ANGELES TO DISQUALIFY, etc.
Defendant. **ENTERED , Clerk U.S. JUL 31 1991 District Court**

This action having been submitted to the Court, the Honorable A. Andrew Hauk, Judge presiding, upon the motion of Plaintiff, RONALD WILLIAMS, to disqualify the Honorable Kim M. Wardlaw from all further proceedings pertaining to the above-entitled action, and the Court having considered the documents submitted, and having determined that this motion is appropriate for decision without oral argument or further briefing of the law, the undersigned Judge Hauk now finds as follows:

1. The papers submitted by Plaintiff are based entirely upon Plaintiff's belief and opinion that Judge Wardlaw is a racist and that she is acting to protect the Ninth Circuit Judges Tashima, Beezer, Brunetti, and Noonan. There is no factual basis for the allegations of bias and prejudice. Moreover, this Court, upon examination of the entire record, finds that Plaintiff's claims that Judge Wardlaw is what he calls a "racist" are scurrilous, unbelievable and outrageous and, in fact, are so utterly nonsensical that they should not even be in the papers which Plaintiff has filed.

Nonetheless, the Court has considered the papers filed by the Plaintiff and places no stock in Plaintiff's claims. Plaintiff's claims are the ravings of someone who is unhappy with himself and also the world, and vents his spleen upon a Judge whose absolute lack of bias is well-known. Plaintiff's attempt to blacken Judge Wardlaw's name and reputation is

reprehensible and, if repeated, could easily serve as the basis for contempt.

2. A motion to disqualify a judge must be based upon a "timely and sufficient" declaration by a party to the action that the presiding judge "has a personal bias or prejudice either against him or in favor of the adverse party." 28 U.S.C. 144. The declaration must contain specific facts and reasons for the belief that the presiding judge is biased, and conclusionary allegations are not sufficient to support a motion to disqualify. See United States v. Sibla, 624 F.2d 864, 868 (9th Cir. 1980); Hinman v. Rogers, 831 F.2d 937, 939 (10th Cir. 1987). Because Plaintiff's declaration in support of his motion is based entirely upon his opinion and belief, the papers filed by the Plaintiff are not legally sufficient as required by 28 U.S.C. 144, and do not raise any case for recusal on the merits as required by 28 U.S.C. 455.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff's Motion to Disqualify Judge Kim M. Wardlaw, filed on July 15, 1996, is denied.

2. This matter, "Ronald Williams v. City of Los Angeles, CV-93-2873-KMW (SHX), " is hereby transferred and assigned back to the Honorable Kim M. Wardlaw, Judge herein, under the applicable rules and regulations of this Court, for all further proceedings.

3. The Clerk of the Court shall file and enter this Order and serve copies thereof upon all parties, counsel of record, and upon the Honorable Kim M. Wardlaw and her Clerk of Court.

Date 7/26/96

"S/J"

A. Andrew Hauk
United States District Judge

APPENDIX D - ORDER OF THE DISTRICT COURT SETTING ASIDE ENTRY OF DEFAULT, ETC.

FILED JUN 27, 1996

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTERED JUN 28 1996 Clerk U.S. Dist Court

RONALD WILLIAMS
Plaintiff,

Vs.

CITY OF LOS ANGELES
Defendant.

CASE NO. CV-93-2873

ORDER SETTING ASIDE ENTRY OF DEFAULT; ORDER DENYING MOTION FOR ENTRY OF DEFAULT JUDGMENT **This constitutes Notice Notice of Entry FRCP 77**

The Court has considered Plaintiff's Motion for Entry of Default Judgment and has reviewed all of the material file by the parties in connection with the Motion. The Court has also considered defendant's request that entry of default be set aside. Based upon all briefs, exhibits, declarations, and other evidence submitted by the parties, as well as all files and records in this case, the Court hereby sets aside entry of default and denies Plaintiff's Motion for Entry of Default Judgment.

1. PROCEDURAL BACKGROUND

On May 18, 1993, plaintiff Ronald Williams ("Plaintiff") filed a Complaint in pro per against defendant City of Los Angeles ("the City") seeking declaratory and injunctive relief. The Complaint requests a declaration that the decision in Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (1991) is invalid and unconstitutional. In Williams, the California Court of Appeals held that Section 190.111(A)(1) of the Los Angeles City Charter barred reinstatement of Plaintiff to his former position with the Los Angeles Police Department because Plaintiff voluntarily retired from the force before petitioning the court for reinstatement.

The City failed to answer or otherwise respond to the Complaint. On August 2, 1993, the clerk entered default

against the City. On the same date, the clerk rejected a request by Plaintiff for entry of default judgment, and advised Plaintiff that such relief could only be granted upon a formally noticed motion. On August 6, 1993, the Court issued a Notice of Discrepancy and Order rejecting Plaintiff's request for default judgment.

On April 1, 1996, the Court issued an Order to Show Cause ("OSC") Regarding Dismissal for Lack of Prosecution and scheduled a hearing on the OSC for April 15, 1996. At the hearing, the Court did not dismiss the action, but ordered that on or before May 31, 1996, Plaintiff move the Court for entry of default judgment or otherwise proceed with the prosecution of this action. The Court noted that if Plaintiff continued to fail to prosecute this action, the Court would again consider dismissing the case, upon motion by the City.

On May 28, 1996, Plaintiff moved for entry of default judgment. The City opposed the motion and requested that the Court set aside entry of default. Plaintiff seeks sanctions under Local Rule 7.7 because the City's opposition papers were filed one week late.

For reasons set forth below, the Court hereby denied Plaintiff's motion for entry of default judgment and sets aside entry of default.

II. DISCUSSION

A. Legal Standard

Fed. R. Civ. P. 55 (c) states in pertinent part, "for good cause shown, the court may set aside an entry of default. . ." Rule 60(b) provides that "the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . . Fed.R.Civ.P. 60(b). The "good cause" that must be shown to set aside entry of default under Rule 55 is essentially the same as the "mistake, inadvertence, surprise, or excusable neglect" required for vacating a default judgment under Rule 60(b). Chrysler Credit Corp. v. Macino, 710 F.2d 363, 367 (7th Cir. 1983)

Although the grounds for relief under the two rules are virtually identical, the "good cause" required for relief from entry of default is a more lenient standard that the "mistake, inadvertence, surprise, or excusable neglect" required for vacating a default judgment. Meehan v. Snow, 652 F.2d 274, 276 (2nd Cir. 1981). Thus, the Court's discretion is especially broad when it sets aside an entry of default, as opposed to a default judgment. O'Connor v. State of Nevada, 27 F.3d 357, 364 (9th Cir. 1994), cert. Den. 115 S.Ct. 1367, citing Mendoza v. Wight Vineyard Mgmt., 783 F.2d 941, 945 (9th Cir. 1986). Criteria which the Court may consider in determining whether to grant relief from default include: (1) reasonable excuse; (2) the degree of prejudice to plaintiff if the motion is granted; and (3) any meritorious defenses. See e.g., Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984).

B. The City Has Made An Adequate Showing of Good Cause to Warrant Setting Aside the Entry of Default.

Here, the City has made an adequate showing of good cause to set aside entry of default. The City has shown that (1) its failure to answer the Complaint was the result of "excusable neglect";" (2) Williams will not be prejudiced by setting aside the entry of default; and (3) the City has a bona fide chance of successfully defending this action. Accordingly, the Court hereby sets aside entry of default.

1. Reasonable Excuse

The Court should set aside an entry of default when the moving party has shown a reasonable excuse for the default. Meadows v. Dominican Republic, 817 F.2d 517 (9th Cir. 1987). Although the defaulting party need not show that the default was due to matters beyond its control, courts should not grant relief where the failure to answer results from culpable conduct or reflects a conscious desire to avoid defending the suit. Schwarzer, Tashima & Wagstaffe, CALIFORNIA PRACTICE GUIDE: FEDERAL CIVIL PROCEDURE BEFORE TRIAL, 6:158 (The Rutter Group 1996); Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc., 840 F.2d 685, 690 (9th Cir. 1988). When

deciding whether a party's neglect is "excusable," courts should consider the equities of the case, taking into account all relevant circumstances and consequences resulting from the failure to answer on time. See Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 113 S.Ct. 1489, 1497 (1993).

The City claims that it has no record of being served with Plaintiff's Complaint and that it did not become aware that a default had been entered until the April 15, 1996 hearing on the OSC re dismissal for lack of prosecution. Cramer Decl. 10. During the April 15, 1996 hearing the Court concluded that the City was in fact served with the Complaint. Despite its failure to respond, it does not appear that the City desires to avoid defending the suit or that its failure to answer was the result of culpable conduct. During the past five years, this Plaintiff and Defendant have been litigating similar claims in this Court and California state courts. It is unlikely that the City consciously defaulted on this Complaint while vigorously defending similar claims. Therefore, the Court concludes that City has made an adequate showing of excusable neglect.

2. Degree of Prejudice

If the plaintiff will suffer prejudice by the setting aside of an entry of default, the court may deny the motion. Direct Mail Specialists, Inc., 840 F.2d at 685.

Plaintiff does not assert that he will be prejudiced with respect to the instant action by the setting aside of the entry of default, but instead claims that delay in this action has somehow prejudiced the outcome of Plaintiff's other, now concluded, litigation. The record indicates that Plaintiff is as culpable as the City for the lengthy delay between the entry of default and the instant motion. Moreover, contrary to his assertions, setting aside entry of default cannot possibly affect the outcome of litigation which has already been completed: therefore, Plaintiff will suffer no prejudice resulting from the Court setting aside the Entry of Default.

3. Meritorious Defense

A party against whom a default has been entered must

make some showing of a meritorious defense before a court will vacate the order. Hawaii Carpenters' Trust Funds v. Stone, 794 F.2d 508, 513 (9th Cir. 1986). The question is whether is whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default. Id. The defendant need only show a bona fide chance that it may prevail, not necessarily that it will prevail. Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3rd Cir. 1984).

Plaintiff seeks a declaration that the decision in Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (1991) is unconstitutional and contrary to controlling state law. Complaint #5. The requested declaratory relief relates to a prior state court action filed by Plaintiff against the City and several other defendants. The prior action related to the termination of Plaintiff's employment and was ultimately resolved against Plaintiff and in favor of the defendants. Plaintiff subsequently attempted to avoid the adverse ruling in the state court action by filing a civil rights action in federal court. The federal action also resulted in an adverse judgment against Plaintiff, and this judgment was affirmed by the Ninth Circuit.

In light of this history, the Court finds that the City clearly has a bona fide chance of prevailing on the merits. The existence of a meritorious defense to the instant case supports the setting aside of entry of default.

C. Even Absent a Showing of Good Cause to Set Aside Entry of Default, the Motion for Entry of Default Would be Denied

The Court cannot grant a motion for default judgment where the complaint states legally insufficient claims. See Cripps v. Life Ins. Co. Of No. America, 980 F.2d 1261, 1267 (9th Cir. 1992).

Plaintiff requests a declaration that Williams is contrary to controlling state law and unconstitutional. The Court questions whether Plaintiff should more appropriately

seek relief by petitioning the California Supreme Court. See Beltran v. State of California 871 F.2d 777 (9th Cir. 1988). In addition, it is not clear to the Court that the Complaint requests declaratory relief in a case or controversy which has not already been adjudicated in this Court. The Court reserves judgment as to whether Plaintiff's complaint is legally sufficient until such time as the issue is fully briefed by both sides, but concludes that the apparent deficiencies in the Complaint support the setting aside of entry of default.

D. Plaintiff's Motion for Entry of Default Judgment is Denied.

Pursuant to Fed.Civ.P. 55(b)(2), judgment by default may be entered by the Court. Ninth Circuit law generally disfavors defaults judgments because of strong public policy in favor of resolving lawsuits of their. See e.g. Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986).

The Court has determined that entry of default should be set aside. Moreover, the deficiencies in the complaint weigh against the Court granting the motion for default judgment even if the City had failed to oppose Plaintiff's Motion. In light of the strong policy in favor of resolving lawsuits on their merits, the Court hereby denies Williams' Motion for Entry of Default Judgment.

E. Plaintiff's Request for Sanctions Is Denied

The imposition of sanctions and penalties pursuant to The Federal Rules of Civil Procedure and the Local Rules is left to the Court's discretion. In this case, Plaintiff has suffered no prejudice from the one-week late opposition, and Plaintiff's request for sanctions is therefore denied.

III. CONCLUSION

For the reasons discussed, the Court hereby sets aside Entry of Default and denies Williams' motion for entry judgment. Therefore, the Court hereby **ORDERS** Defendant to answer or otherwise respond to the Complaint within 20 days of this Order.

IT IS SO ORDERED

DATED: June 26, 1996 **"S/J" K.M. Wardlaw**

APPENDIX E - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MARCH 25, 1996

RONALD WILLIAMS No. 94-56250

Plaintiff-Appellant,

v.

CITY OF LOS ANGELES; DARRYL F. GATES, Chief of Police; as Chief of Police and Individually; ROBERT McNAMARA, Individually; and CONNIE CASTRUITA, Individually,

FILED MAR 25, 1996

Defendants-Appellees. Cathy Catterson, Memorandum Clerk, U.S. Court of Appeals

Appeal from the United States District Court for the Central District of California

A. Wallace Tashima, District Judge Presiding

Argued and Submitted February 9, 1996

Pasadena, California

Before: BEEZER, BRUNETTI, and NOONAN, Circuit Judges

The district court granted summary judgment for defendants on Ronald Williams' claims that he was denied his constitutional right to continue public employment for racially discriminatory reasons in violation of 42 U.S.C. 1983, 1985 and 2000e (Title VII). We agree with the district court that Williams voluntarily retired from the Los Angeles Police Department (the "Department") and affirm grant of summary judgment in favor of the City of Los Angeles, former Police Chief Darryl Gates and Robert McNamara and Connie Castruita, Department Internal Affairs investigators.

FACTS

In August, 1987, Williams had served twenty years with the Los Angeles Police Department and held the rank of Lieutenant II. Following a hearing by the Department Board of Rights, (the "Board") Williams was found guilty of three charges stemming from alleged sexual misconduct: failing to respond accurately to questions about the allegations,

specifically denying having exposed two minors to an explicit film, and failing to return two films to the store where he had rented them. Williams could not be disciplined for the alleged misconduct itself because it had occurred over a year before the Department commenced disciplinary proceedings. On **October 19, 1987**, Gates ***removed*** Williams from service ***effective August 5, 1987.*** Williams then took the following steps:

November 5, 1987: Williams ***voluntarily retired*** by applying to the City pension board for service retirement ***effective*** **August 1, 1987.**

November 16, 1987: Williams filed suit in the California courts seeking to overturn his removal.

December 10, 1987: the pension board ***granted*** Williams' ***retirement*** **effective August 1, 1987;** his monthly pension payments soon began.

Proceedings in the Los Angeles Superior Court first yielded an order to the Board to set a new penalty because the Board improperly considered the sexual misconduct allegations in recommending removal. In response the Board again recommended termination but specified that Williams' guilt on the three charges was the only basis for the penalty. Once more Williams petitioned the Los Angeles Superior Court which ordered the Board to reinstate Williams and to impose a penalty less than termination. The Board then recommended a 30-day suspension in which Gates concurred. However, when Williams sought reinstatement the City argued that the City Charter prohibited reinstatement of anyone, like Williams, retired voluntarily at the rank of lieutenant or above.

Williams returned to the state courts where the Superior Court ordered his reinstatement but the Court of Appeals reversed, finding that (1) the City Charter prevented Williams' return to duty since he elected to retire rather than withdraw his pension contributions, (2) Williams erred unilaterally in his belief that retirement did not harm his chances

for later reinstatement, and (3) the City did not induce him to retire voluntarily. See Williams vs. City of Los Angeles, 229 Cal.App.3d 1627, 281 Cal.Rptr. 21, pet. for rev. denied (1991)

In March 1990 Williams initiated this federal suit alleging racial discrimination. The district court stayed the action until the state court proceedings were concluded, on May 10, 1991. In August 1992 the district court dismissed the 1985 claim. Summary judgment was granted in July 1994.

STANDARD OF REVIEW

Summary Judgment

Williams contends that the district court erred in granting the summary judgment on grounds other than those raised by the parties in their summary judgment pleading. Williams cites no cases to support this contention. The record reveals that Williams had a full and fair opportunity to discuss the issues behind the district court's grant of summary judgment. Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1131, n.1 (9th Cir. 1989), cert. Denied 64 U.S.L.W. 3587, 3591 (March 4, 1996) (No. 95-1054); United States v. Grayson, 879 F.2d 620, 625 (9th Cir. 1989). These issues included whether Williams was barred from maintaining a wrongful termination action by his voluntary retirement and whether the City's liability was precluded because of its actions, even if racially motivated, did not result in any harm to Williams.

In its Statement of Uncontroverted Facts and Conclusions of Law submitted on the summary judgment motion the City presented arguments that Williams' voluntary retirement was Williams' voluntary decision and state specifically that these facts "preclude the maintenance of any of Williams' theories of relief in the present action." These pleadings and other papers filed with the court gave Williams adequate notice that these issues would be discussed in connection with summary judgment.

At the summary judgment hearing Williams counsel discussed at length the harm he felt Williams suffered and whether racial animus existed. The court limited its

discussion at the hearing to matters relevant to the one issue preserved for trial in the pretrial conference order - whether racial animus existed in the City's action - and to matters raised in the City's proposed Statement of Uncontroverted Facts. The district court order reiterated that there was no evidence of racial animus and that there was no legal harm to plaintiff. The record shows that Williams had ample opportunity to address all issues which the district court considered in granting summary judgment.

Summary judgment was proper because Williams failed to articulate any genuine issue of material fact as to his allegations that the defendants acted with racial animus and violated 42 U.S.C. 1983, and 42 U.S.C. 2000e et seq. ("Title VII"). The district court properly concluded that the decision of the California Court of Appeals in Williams v. City of Los Angeles, supra, precluded maintenance of relief under any of Williams' theories of racial discrimination. That opinion established that Williams retired voluntarily, not at the inducement of any City official. These established facts precluded the existence of any issues of material fact for Williams' 1983 claims.

To prevail on summary judgment of the Title VII claim Williams had to establish a prima facie case of discrimination. Washington v. Garrett, 10 F.3d 1421, 1432 (9th Cir. 1993). The district court properly concluded that the uncontroverted facts showed no evidence of racial animus. The court also correctly concluded Williams failed to meet his summary judgment burden of coming forward with a prima facie case that defendants' actions were motivated by intentional racial discrimination.

Recusal

Williams argues that his own action in sending three disrespectful letters to Judge Tashima should have resulted in the Judge's recusal. Williams contends that the letters, which allegedly described the Judge in terms such as "repressive", "racist", and "not fit to sit of a bench" prejudiced the Judge against Williams.

28 U.S.C. 455 provides that: (a) Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party. . ."

Recusal under 455 "is appropriate where a reasonable Man with knowledge of all the facts would conclude that [the] judge's impartiality might reasonably be questioned." Moideen v. Gillespie, 55 F.3d 1478, 1482 (9th Cir. 1995). This standard for judging the appearance of partiality is an objective one. Preston v. U.S., 923 F.2d 731 (9th Cir. 1991). "It has long been established, however, that a party cannot force a judge to recuse himself by engaging in personal attacks on the judge" Standing Committee on Discipline of the U.S. District Court v. Yagman, 55 F.3d 1430, 1443 (9th Cir. 1995). While Yagman did not involve 455, the court cited to United States v. Studley, 783 F.2d 934, 939-40 (9th Cir. 1986) which held that "intemperate and scurrilous attacks" contained in the defendant's post-conviction motion for recusal of the judge who had convicted her could not compel disqualification under 455. Williams has made no showing that Judge Tashima held any deep seated antagonism toward Williams or that his impartiality might reasonably be questioned. The district court correctly decided not to recuse Judge Tashima.

Procedural Claims and Motion to Dismiss

Williams' two procedural claims that the district court (a) abused its discretion in denying Williams unopposed motion to amend his complaint and (b) erred in allowing the City to file an untimely motion for summary judgment are with merit.

Also without merit is Williams' claim that the district court erred in granting the City's motion to dismiss because the motion was filed while the City was in default for failing to answer the complaint. Fed.R.Civ.P. 55(c) provides "for good cause shown may set aside an entry of default". The rule

gives no indication that entry of default precludes a court from hearing other motions before deciding the default motion. Because the court had the authority to set aside an entry of default and in fact did so, there was no prejudice to Williams in hearing other motions. Furthermore, the district court property dismissed Williams' claim under 42 U.S.C. 1985 in reliance on Great American Saving and Loan v. Novotny, 442 U.S. 366, 372-76, 99 S.Ct. 2345, 60 L.Ed.2d 957, 964 (1979). Novotny prevents Williams from stating a separate claim under 1985 when he had a remedy under Title VII.

The judgment of the district court is AFFIRMED.

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APPENDIX F - JUDGMENT OF THE UNITED STATES DISTRICT COURT, GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (against Complaint Under Civil Rights Act and related statutes)

FILED JULY 27, 1994

RONALD WILLIAMS

Plaintiff,

v.

CITY OF LOS ANGELES, et al.,

Defendants.

No. CV-90-1252 AWT (GHKx)

July 27, 1994

This matter came regularly before the court on July 27, 1994 for hearing on the motion of defendants CITY OF LOS ANGELES, DARYL G. GATES, ROBERT McNAMARA, and CONNIE CASTRUITA for summary judgment. James K. Hahn, City Attorney of the City of Los Angeles, appeared as attorney for the defendants, and Edi M.O. Faal appeared as attorney for plaintiff. All pleading and papers on file in the case having been read and examined by the Court, arguments having been presented, and the court having granted defendants' motion for summary judgment, in accordance with

the Statement of Uncontroverted Facts and Conclusions of Law signed and filed concurrently herewith.

IT IS ADJUDGED the plaintiff Ronald Williams take nothing, that the action is **DISMISSED** on the merits and that defendants Daryl F. Gates, Robert F. McNamara, and Connie Castruita shall recover from plaintiff their costs of the suit in the amount of $_____.

Dated: July 27, 1994 _____

CONCLUSIONS OF LAW

1. A party is entitled to summary judgment if the pleadings, depositions, and interrogatories, and admissions on file, together with filed affidavits or declarations, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P., Rule 56(c); Allen v. A.H. Robins Co., 752 F.2d 1365, 1368 (9th Cir. 1985)

2. The opinion of the California District Court of Appeals in Williams v. City of Los Angeles, supra, conclusively established, for purposes of this action, that (a) Williams' service retirement was his own voluntary decision, not induced by any action, forbearance, or promise by any City official, and (c) Williams' requested reinstatement is statutorily barred by his voluntary retirement.

3. These facts preclude the maintenance of any of Williams' theories of relief in the present action.

4. Equitable tolling applies to this action.

5. As set out in Williams, supra, the City's refusal to reinstate Williams during this period of time was statutorily barred by Williams' voluntary service retirement. Los Angeles City Charter 190.111(A)(1).

This Statement of Uncontroverted Facts has been by defendant as required by Local Rule 7.14.1. Plaintiff's Statement of Genuine Issues, required by Local Rule 7.14.2, filed July 1, 1994, admits almost all of the facts set forth herein as uncontroverted although he contests the relevancy (or heresay character) of a few of them. Thus, the essential facts are uncontroverted.

The single factual issue presented for trial, by the Pretrial Conference Order, filed March 8, 1994, is whether these defendants intentionally discriminated against plaintiff Ronald Williams ("Williams") on the basis of Williams' race when these defendants instituted and maintained disciplinary charges against Williams in 1987 and when they refused to reinstate Williams at any time since then?

Plaintiff has the burden on this issue. As the uncontroverted facts show, there is no evidence of facial animus. Plaintiff has not met his summary judgment burden of proof that defendants' actions were motivated by intentional racial discrimination.

Further, on these uncontroverted facts, defendants cannot be held liable for "instituting and maintaining disciplinary charges against plaintiff" no matter whether their actions were racially motivated or not. That is because the actions of defendants did not result in any legal harm to plaintiff. Defendants' disciplinary actions were repeatedly overturned by the state courts, and but for plaintiff's voluntary retirement, plaintiff would still be a member of the Los Angeles Police Department today. With respect to defendants' refusal to "reinstate" plaintiff, defendants' intent or state of mind in so refusing is irrelevant. That is because Williams v. City of Los Angeles, supra, conclusively established that 190.111 of the City Charter of the City of Los Angeles prohibits the reinstatement of plaintiff. Thus, even absent alleged bad motives and had defendants' otherwise wanted to reinstate plaintiff, they were legally prohibited from doing so. They cannot be held liable for following the only course of action permitted by law, once plaintiff had voluntarily retired.

In short, there is no evidence of any legally cognizable harm to plaintiff from any actions of defendants. When plaintiff challenged defendants' disciplinary actions in state court, he was vindicated and his termination was twice set aside. Defendants were legally prohibited from reinstating plaintiff by the City Charter.

Plaintiff's memorandum in opposition to this motion (p.3) claims that he was deprived of his due process rights and his property rights to his employment as a police lieutenant. These arguments are without merit. The record reveals that plaintiff received at least all the process that was due him. The process was such that plaintiff was able, as shown above, successfully to challenge his termination - twice. Plaintiff was deprived of nothing because of the lack of due process. Further, plaintiff was not deprived of any property right he had in his employment. Williams v. City of Los Angeles, supra, conclusively establishes that plaintiff's retirement was voluntary; thus, there was no deprivation.

At another point in his opposition to this motion (p.5) plaintiff states the issues as:

1. Whether plaintiff's constitutional rights were violated by the wrongful termination; and,

2. Whether defendants' actions were racially motivated.

The short answer to the first "issue" is that plaintiff was not terminated, he voluntarily retired, and on the second "issue", as explained above, the motivation for defendants' actions is irrelevant because no legal harm resulted to plaintiff from their actions, regardless of their motive.

Plaintiff proceeds under Title VII of the Civil Rights Act of 1964 and under 42 U.S.C. 1983. However, the uncontroverted facts show that plaintiff has not been discharged or otherwise discriminated against as to any term or condition of employment, such as to constitute an unlawful employment practice under Title VII, 42 U.S.C. 2000e-2(a)(1). And with respect to his claim under 1983, plaintiff has shown no deprivation of a federal constitutional or statutory right.

For the foregoing reasons, defendants' motion for summary judgment is granted. Judgment shall be entered consistent herewith.

Dated: Jul. 27, 1994 "S/J"

A. Wallace Tashima

APPENDIX G - ORDER OF THE UNITED STATES DISTRICT COURT GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS (Complaint of Employment Discrimination)

FILED AUGUST 27, 1992

RONALD WILLIAMS

Plaintiff,

v.

CITY OF LOS ANGELES, et al.,

Defendants.

No. CV-90-1252 AWT (GHKx)

United States District Court

Central District of California

IT IS HEREBY ORDERED:

1. Defendants CITY OF LOS ANGELES, et al.'s (hereinafter "Defendant") motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is hereby GRANTED IN PART AND DENIED IN PART. **FILED AUG 27, 1992**

3. On **March 14, 1990,** Plaintiff RONALD WILLIAMS (hereinafter "Plaintiff") a former Los Angeles police lieutenant, filed a complaint alleging three separate causes of actions: (1) violation of Title VII, 42 U.S.C. 2000e et seq. (Title VII); (2) violation of 42 U.S.C. 1985; and (3) violation of 42 U.S.C. 1983. Prior to Defendants answering the complaint, this action was stayed pending the outcome of Plaintiff's state court proceeding which appeared to involve similar legal and factual issues. The state court proceedings was concluded on August 1, 1991.

3. In state court, Plaintiff contended that the City wrongfully terminated him . . . The state court ultimately concluded that: (1) Williams was properly disciplined by the City; and (2) his offenses warranted only suspension, not termination. . . . The state court also concluded that Williams had voluntarily retired from the police department and therefore could not be reinstated. (Plaintiff requested a service retirement between the time that the City ordered his removal

and the time that he appealed that decision in state court.) See Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (1991)

5. In analyzing the sufficiency of a complaint under Fed.R.Civ.P. 12(b)(6), the Court must assume that all of the allegations, as pleaded, are true. See e.g., California Motor Transp. Co. Trucking Unlimited, 404 U.S. 508, 92 S.Ct. 609 (1972); Abramson v. Trucking Unlimited, 897 F.2d 389, 391 (9th Cir. 1990). Moreover, under the notice pleading requirements, Plaintiff's claims must be construed liberally, and dismissal is improper unless "it appears beyond douby that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief". Gibson v. United States, 781 F.2d 1334, 1337 (9th Cir. 1986) cert. denied, 479 U.S. 1054, 107 S.Ct. 928 (1987).

A. Plaintiff's Title VII Claim

The City first asserts that Plaintiff's claim under Title VII is barred because that claim has been fully adjudicated by the State courts. The Court disagrees.

State court rulings possess res judicata effect only when those decisions encompass a full and fair litigation of a plaintiff's claims. Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982). Moreover, Plaintiff's subsequent claims must relate to the same "primary right" as the claim in the prior action. Sanchez v. City of Los Angeles, 936 F.2d 1027, 1036 (9th Cir. 1990). In assessing whether the same "primary right" has been violated, the most important inquiry is whether plaintiff has suffered injury to more than one interest. Los Angeles Unified Branch NAACP v. LA Unified School Dist., 750 F.2d 731, 738 (9th Cir. 1984)(en banc)

Here, the only claim Plaintiff pursued in state court was the propriety of his punishment. He never alleged that the City acted in a discriminatory fashion on the basis of race. As such, the primary rights involved between the two actions are distinct: the right to a properly determined punishment vs. the right to be free from discriminatory conduct. See Agarwal v. Johnson, 25 Cal.3d 932 (1979) (Title VII claim and claim for intentional infliction of emotional

distress arising from the same set of facts were not the same "primary right"). (In this regard, it is important to note that California's res judicata doctrine does not encompass all claims which may be asserted which arise from the same set of facts) . . . . . .

For all these reasons, the Court hereby GRANTS IN PART and DENIES IN PART Defendants' motion to dismiss.

IT IS SO ORDERED

DATED: August 26, 1992 **"S/J"** .

James M. Ideman
United States District Judge

[END OF PRECEDING DOCUMENT]

APPENDIX - H, ORDER OF 9TH CIRCUIT DENYING PETITION FOR REHEARING, etc.

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

[FILED Mar 16, 1998]

RONALD WILLIAMS	No. 97-55070
Plaintiff-Appellant	DC No. CV-93-02873-KMW
v.	
CITY OF LOS ANGELES	ORDER
Defendant-Appellee	

Before: BROWNING, KLEINFELD, AND THOMAS, Circuit Judges

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court had been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX I - DECISION OF THE BOARD OF RIGHTS (Los Angeles Police Department) EXECUTION OF THE ORDER

IN THE MATTER OF RONALD WILLIAMS, 11916 **RE: Complaint No. B.F. 9352 Dated: July 30, 1987**

TO THE CHIEF OF POLICE

Decision of the Board

The above-entitled matter came on regularly for hearing before this Board of Rights on the verified complaint of Daryl F. Gates, Chief of Police, filed with the Police Commissioners on August 4, 1987 all preliminary and jurisdictional requirements have been substantially complied with the accused being present and represented by counsel the board having heard all evidence properly offered and the accused given a reasonable opportunity to defend against charges preferred.

After a full and impartial hearing on its merits, the Board deliberated and carefully considered all the evidence adduced before it. The Board finds that accused is guilty of Counts 1, 2 and 3.

The Board therefore prescribes its penalty as follows: That RONALD WILLIAMS 11916 be removed from his position of Lieutenant with total loss of pay, **effective July 30, 1987.**

We certify the above:

October 19, 1987

"S"
W.O. Gartland, Chairman

"S"
F.J. Patchett, Member

"S"
R.O. Woods, Member

EXECUTION OF ORDER

TO RONALD WILLIAMS #11916 member of the Los Angeles Police Department. Under power conferred upon me by Section 202, Article XIX, Charter of the City of Los Angeles, I hereby **REMOVE** you from your position as LIEUTENANT in the Los Angeles Police Department with

total loss of pay, **effective July 30, 1987**, pursuant to the above order of the Board of Rights.

Dated: October 19, 1987 "5"

DARYL F. GATES,
Chief of Police

. . . The time limit for seeking review of this administrative determination and preparation of record is governed by Section 1094.6 of the California Code of Civil Procedure. See reverse side for that Section.

CERTIFICATE OF SERVICE

I hereby certify that I served the above statement upon RONALD WILLIAMS at 1600 hours October 19, 1987.

By forwarding a copy thereof by certified mail addressed to him at last known address at 200 W. Arbor Vitae, #7, Inglewood, CA 90301

Margie D. Grundy
Member of the Los Angeles Police Department

END OF ABOVE DOCUMENT ["Decision", "Execution" and "Certificate of Service"]

APPENDIX J - ORDER OF THE SUPERIOF COURT, COUNTY OF LOS ANGELES, FILED FEBRUARY 2, 1988

RONALD WILLIAMS,
Petitioner

v.

CITY OF LOS ANGELES, a Municipal Corporation; DARYL F. GATES, Chief of Police; and DOES 1 through 30, inclusive,
Respondents.

Case No. C 667 976

PEREMPTORY WRIT OF MANDATE
[C.C.P. 1094.5]

TO: CITY OF LOS ANGELES AND DARYL F. GATES, CHIEF OF POLICE, Respondents:

WHEREAS Petitioner served and filed herein his duly verified Petition for Writ of Mandate, and a Hearing was held on January 26, 1988;

WHEREAS it appears to this Court that Petitioner has no other plain, speedy and adequate remedy in the ordinary course of law;

WHEREAS it appears to this Court that the penalty imposed upon Petitioner is excessive, arbitrary and capricious and constitutes a clear abuse of discretion;

THEREFORE, you CITY OF LOS ANGELES and you CHIEF OF POLICE DARYL F. GATES are hereby commanded to reconvene the Board of Rights, with instructions to impose a proper punishment without any consideration of the underlying charges, and to consider the report and recommendations of Petitioner's Commanding Officer in making its decision.

You are further commanded to make and file a return to this Writ by April 18, 1988 showing what you have done to comply with this Writ.

Witness the Honorable Mariam A. Vogel, judge of the Superior Court - Attest my hand and Seal of this Court this 2nd day of February, 1988

[End of above document - Peremptory Writ of Mandate]

APPENDIX K - DECISION OF THE BOARD OF RIGHTS and EXECUTION OF THE ORDER

[Rehearing pursuant to Superior Court]

IN THE MATTER OF RE: Complaint No. B.F. 9352
RONALD WILLIAMS, 11916, Dated July 30, 1987
TO THE CHIEF OF POLICE

Decision of the Board

The above-entitled matter came on regularly for hearing before this Board of Rights on the verified complaint of Daryl F. Gates, Chief of Police, filed with the Police Commissioners on August 4, 1987 all preliminary and

jurisdictional requirements have been substantially complied with the accused being present and represented by counsel the board having heard all evidence properly offered and the accused given a reasonable opportunity to defend against the charges preferred.

After a full and impartial hearing on its merits, the Board deliberated and carefully considered all the evidence adduced before it. The Board finds that accused is guilty of Counts 1, 2 and 3.

The Board therefore prescribes its penalty as follows: That RONALD WILLIAMS 11916 BE removed from his position of Lieutenant with total loss of pay, **effective July 30, 1987.**

We certify the above

April 7, 1988

"S"
W.O. Gartland, Chairman

"S"
F.J. Patchett, Member

"S"
R.O. Woods, Member

EXECUTION OF ORDER

To Ronald Williams 11916 member of the Los Angeles Police Department. Under power conferred upon me by Section 202, Article XIX, Charter of the City of Los Angeles, I hereby REMOVE your from your position as LIEUTENANT in the Los Angeles Police Department with total loss of pay, **effective July 30, 1987,** pursuant to the above order of the Board of Rights.

Dated April 15, 1988 "S" **DARYL F. GATES**
Chief of Police

. . . . The time limit for seeking review of this determination and preparation of the record is governed by Section 1094.5 of the California Code of Civil Procedure. See reverse side for that Section.

CERTIFICATE OF SERVICE

I hereby certify that I served the above statement upon RONALD WILLIAMS at **0930 hours April 21, 1988.**

By forwarding a copy thereof by certified mail addressed to him at last know address at 200 W. Arbor Vitae, #7, Inglewood, CA 90301

Margie D. Grundy
Member of the Los Angeles Police Department

[End of above document, "Decision", "Execution" and "Certificate of Service"]

APPENDIX L - JUDGMENT OF THE SUPERIOR COURT OF CALIFORNIA, FILED MAY 18, 1988

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

RONALD WILLIAMS
Petitioner,

v.

CITY OFLOS ANGELES, a Municipal Corporation; DARYL F. GATES, Chief of Police; and DOES 1 through 30 inclusive,
Respondents.

JUDGMENT

This cause came regularly for Hearing on **May 10, 1988** at 9:00 a.m. in Department 86 of the above-entitled Court, the Honorable Miriam A. Vogel, Judge, presiding. Petitioner appeared by his attorney, LAURENCE B. LABOVITZ and Respondents appearing by Deputy City Attorney DAVID HOTCHKISS, and the cause having been argued and submitted for decision,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

A peremptory writ of mandate shall be issued and directed to Respondents, CITY OF LOS ANGELES and DARYL F. GATES, Chief of Police, commanding

1. Respondents to set aside the decision terminating Petitioner from his position as a Lieutenant II for the City of Los Angeles made by Respondents on **April 15, 1988,** in the matter entitled IN RE: RONALD WILLIAMS, 11916;

2. Petitioner shall be restored to his position as a Lieutenant II;

3. Respondent shall hold such proceedings as are appropriate and impose a proper penalty short of termination.

5/18/88 "S/J" **Mariam Vogel**

JUDGE OF THE SUPERIOR COURT

[End of above document, Judgment, Writ of Mandate]

APPENDIX M - OPINION OF THE CALIFORNIA STATE COURT OF APPEALS, SECOND APPELLATE DISTRICT, Division Five

RONALD WILLIAMS **B035287**

Petitioner and Respondent

v.

CITY OF LOS ANGELES, a Municipal Corporation; DARYL F. GATES, Chief of Police,

Respondents and Appellants.

Filed August 10, 1989

Appellants, the City of Los Angeles and its Chief of Police, Daryl Gates, appeal the issuance of a peremptory writ of mandamus (Code Civ. Proc. 1094.5) by the superior court, ordering them to set aside their decision terminating respondent Ronald Williams from his employment with the Los Angeles Police Department, to restore Williams to his former position as a Lieutenant II, and remanding the matter for the imposition of a penalty short of termination.

We AFFIRM the trial court's judgment.

FACTS

Williams was found guilty by an administrative board of misconduct, specifically, that he failed to accurately respond

to questions posed by officers conducing an official investigation and that he failed to return two rented video movies to their right owner.

In 1987, during student interviews conducted by the Los Angeles Police Department ("Department") at Washington High School regarding an incident unrelated to the matters in issue here, Sharondalyn Harris ("Harris") and Michelle Guidry ("Guidry") then each 15 years old, told an interviewing officer that an adult male police officer had made sexual advances toward Guidry four years earlier. The two girls state that respondent, Lieutenant Williams ("Williams") had made such sexual advances on a number of occasions while Guidry was at his home during the period that ran from April to June, 1983. Guidry had known Williams since she was an infant because her mother had once been involved in a romantic relationship with him. Guidry's mother had remained on friendly terms with Williams and in 1982 had requested that he employ Guidry to clean his apartment as a means of providing her with spending money. Williams agreed. Thereafter, Guidry generally went unescorted to Williams' apartment to clean. On June 24, 1993, however, Harris accompanied Guidry to Williams' apartment and related that while they were both there, Williams made numerous sexual advances towards Guidry and had shown both of them sexually explicit video movies and books.[1]

Based on the allegations of Harris and Guidry, an internal affairs investigation was launched by the Department. A search of Williams' apartment yielded approximately 13 sexually explicit videotapes as well as approximately 90 paperback books which contained sexually explicit reading material.[2] Two of the videotapes recovered (entitled "The Big Rip-Off" and "The Temptress") had been rented from

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[1] The complaint eventually lodged cited 13 allegations of sexual misconduct by Williams occurring at his residence on April 2, April 16, May 13, and June 24, 1993.

[2] A total of 24 videotapes and 165 books were taken from Williams' apartment during the search.

California Video in Los Angeles and were a year and a half overdue.

Williams was questioned by Department personnel in March and April 1987 regarding the claims made about his conduct with Harris and Guidry and his failure to return the rented videotapes. Williams admitted that Guidry had been to his apartment to clean on several occasions from 1982 to 1985 and stated that she would clean the entire apartment. He remembered that she had brought a friend to his apartment on one occasion. He admitted that he and Guidry had often engaged in a game of "playing tag" which involved no physical contact other than a playful slap on Guidry's arms, shoulders, or back. He admitted having sexually explicit reading material and sexually explicit videotapes but claimed that they were usually hidden. He denied that he showed Guidry and Harris sexually explicit videotapes and denied ever using the videocassette recorder in their presence. Williams admitted renting videotapes from California Video, but did not have any independent recollection of still having the two videotapes, "The Big Rip-Off" and "The Temptress", in his possession. He indicated that he thought he had returned those videotapes to California Video and did not recall owing any money for their rental. He denied all other allegations made by Harris and Guidry.

Based on the interviews had with Williams, information obtained from other witnesses and material seized from respondent's apartment, disciplinary charges were filed against Williams for "failing to accurately respond" to questions asked of him during the Department's investigation of the complaints made against him and for his failure to return the two rented videotapes found in his apartment to their rightful owner.[3]

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[3] The actual charges were as follows:
"Count 1. On March 19 and April 6, 1987, at Internal Affairs Division, you failed to accurately respond to questions posed to you by Sergeant R. McNamara and Detective C. Castruita who were conducting an official

Los Angeles City Charter 202(1)[4] provides that the removal of a police officer may only be based on an act committed by that officer within one year prior to the filing of a complaint charging the officer with such improper conduct. Apparently because the one-year statute of limitations period had long expired, the Department was precluded from filing any charges actually relating to the alleged sexual incident involving Harris and Guidry.

At the hearing before the Board of Rights ("Board")[5] Williams denied the charges brought against him and responded in substantially the same manner as he had during the interviews conducted by the Department's Internal Affairs Division (IAD). Williams admitted that Guidry had been to his apartment on several occasions and had once been accompanied by a friend. He reiterated his contention that he had engaged in a "tag-like" game with Guidry that they had

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investigation, when you denied having exposed M. Guidry and S. Harris to a sexually explicit movie.

"Court 2. During the year last past, after having rented a video movie, 'The Temptress', from R. Kim, you failed to return the video to the rightful owner.

"Count 3. During the year last past, after having rented a video movie, 'The Big Rip-off', from R. Kim, you failed to return the movie to the rightful owner."

[554] Los Angeles City Charter section 202(1) states, in pertinent part, that: "No officer or employee of the Police Department shall be suspended, removed, deprived of his office or position, or otherwise separated from the service of the Police Department (other than by resignation), except for good and sufficient cause shown upon a finding of 'guilty' of the specific charge or charges . . . after a full, fair, and impartial hearing before the Board of Rights . . . Such charges must be based upon some act committed or omitted by such officer or employee within one (1) year prior to the filing of the complaint referred to herein . . ."

[5] The Board of Rights is the administrative body designated to determine the truth of charges brought against police officers and to recommend an appropriate penalty pursuant to Los Angeles City Charter section 202, subdivisions (1) and (6).

played since she was a child but he denied that he every even mistakenly touched Guidry in a way that could ever be interpreted as sexual contact. He denied ever showing the girls any videotapes but, contrary to his earlier statements to IAD, Williams told the Board that he had explicitly instructed Guidry not to clean his bedroom. Finally, he testified that he had learned only as a result of the IAD investigation that the videotapes, "The Big Rip-Off" and "The Temptress," were in his possession and had not been returned to California Video.

The Board then took testimony from various witnesses and purported experts in the field of sexual crimes**. Harris testified but Guidry did not.** The Board found Williams guilty of the misconduct charged and recommended dismissal of Williams from his position with the Department.[6] The Department dismissed Williams **effective July 30, 1987.**

Williams applied to the superior court for a writ of mandate to set aside the Board's findings. Respondent also requested that the trial court take into account a report filed by Williams' commanding officer recommending only suspension which had not been presented to the Board. The court conducted an independent review of the administrative record. It considered Williams' commanding officer's report, as requested, as well as other evidence that demonstrated the Department had **previously disciplined similar officer misconduct with penalties imposed averaging 24 days of suspension from service.** The court then granted the writ and remanded the matter back to the Board with instructions "to impose a proper punishment without any consideration of the

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[6] The Board stated:

"During the penalty determination, the Board is required to look at a pattern of conduct. It is clear that no such pattern has come to light.

"The Board would normally address the theory of progressive discipline. However, we find this unconscionable act so shocking that it can stand alone in our penalty consideration".

"In view of all the circumstances, the Board believes that it has no alternative but to recommend to the Chief of Police that you be removed from your position as a Los Angeles Police Officer".

underlying charges [of sexual misconduct] and to consider the additional made by Williams' commanding officer in making its decision.

Pursuant to this judgment, the Board reconvened on **April 6, 1988.** After receiving additional exhibits and hearing further arguments from both parties in the matter, the Board again recommended that Williams be removed from his position.[7]

Williams then filed an application for an "Order to Show Cause re Failure to Obey Peremptory Writ of Mandate." At a hearing on the matter in May 1988, the trial court stated that "The problem with Captain Gartland's statement [that the superior court found that the underlying misconduct did occur] is that I made no such finding. I found that the weight of the evidence supported the board's finding that lieutenant Williams failed to accurately to respond to questions posed to him by the investigating officers. . . It appears to me that the Board of Rights did not understand my earlier order. . ."

The court then issued a second peremptory writ to the Board to set aside its order terminating Williams, again ordering the Department to reinstate Williams, to hold such proceedings as are appropriate and to impose a penalty short of termination. It is from the issuance of this second writ that the City of Los Angeles ("City") and its Chief of Police, Daryl F. Gates, appeal.

DISCUSSION

The superior court correctly exercised its independent judgment in reviewing the Board's findings, reweighing the evidence and determining whether the administrative findings were sustained. (Strumsky v. San Diego County Employees

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[7] The Board stated: "The Superior Court specifically ordered this Board to 'consider the report and recommendations of the accused's commanding officer' in making its decision. We have considered that report. We note that Captain Conner did not believe that the underlying misconduct of showing sexually explicit films to minors could be established. This Board did find that the misconduct did occur. The Superior Court in its review made the same finding. . ."

Retirement Assn. (1974) 11 Cal.3d 28, 44; Richardson v. Board of Supervisors (1988) 203 Cal.App.3d 486, 493.) On appeal, the question is not whether the administrative determination was supported by the weight of the evidence, but whether there is substantial evidence to support the trial court's findings. All conflicts must be resolved in favor of the respondent, all legitimate and reasonable inferences must be made to uphold the superior court's findings and this court may not substitute its deductions for those of the superior court. (Ibid.)

Here, the trial court found that: "Lieutenant Williams' statements to the investigation officers were not entirely consistent with his testimony at the original hearing [before the Board]. He did not make full disclosure at the time of the investigation." Based upon this finding, the trial court found that while the evidence supported the charges of "failing to accurately respond," it need not determine whether Williams actually showed videotapes to the girls or if the alleged sexual misconduct occurred since such findings were not integral to the charges pending against him. The Court explained that "Lieutenant Williams, was not as I understand it, charged with making false or misleading statements. He was charged with failing to accurately respond to questions posed by Sergeant McNamara and Detective Castruita. I think this is a difference with a distinction and not just a question of semantics because of [sic] failure to make a full disclosure when charged with a crime is quite different than lying under oath."

A trial court may only overturn an administratively imposed penalty when the penalty is found to be grossly excessive or a manifest abuse of discretion. (Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, 217-218; Richardson v. Board of Supervisors, supra, 203 Cal.App.3d at p. 494.) It is not entitled to interfere with the Board's imposition of penalty merely because in its evaluation of the circumstances the penalty of dismissal appears too harsh. (Paulino v. Civil Service Com. (1985) 175 Cal.App.3d 962, 970.) An abuse of discretion occurs whether the penalty imposed exceeds the

bounds of reason; the fact that reasonable minds may differ as to the propriety of the penalty supports a finding that the Board acted within its discretion. (Id. at p. 971.) In determining whether the penalty of termination is excessive as a matter of law, the overriding consideration is the extent of harm to the public service resulting from the officer's conduct or the likelihood that the conduct, if repeated, would result in such harm. (Id. at p. 971; Richardson v. Board of Supervisors, supra, 203 Cal.App.3d at p. 494; Anderson v. State Personnel Board (1987) 194 Cal.App.3d 761, 771.) Other factors which should be taken into account are the circumstances surrounding the officer's misconduct and the likelihood that the conduct will recur. (Ibid.)

Upon finding that the penalty fixed by the administrative agency is grossly excessive, the trial court has the power to direct the agency to fix the penalty at something less severe than originally set, although the precise terms of the penalty should rest with the agency. (Richardson v. Board of Supervisors, supra, 203 Cal.App.3d at p. 495.)

Applying the considerations enunciated above in determining if the Board abused its discretion, we first consider whether there was any evidence of harm to the public service resulting from Williams' conduct. The record contains no indication whatsoever that the facts of the matter were made available to the public, resulting in adverse publicity, or that the alleged misconduct had any demoralizing effect on the Department. (See, e.g. Anderson v. State Personnel Board, supra, 194 Cal.App.3d at p. 772 - - where there was credible evidence that a highway patrol traffic officer's conduct in appearing nude in and around his residence in plain view of neighborhood women and children harmed the reputation of the California Highway Patrol, offended the public and under mined the effectiveness of the officer's relations with fellow officers; Ackerman v. State Personnel Board (1983) 145 Cal.App.3d 395 - - highway patrol officer's repeated lies regarding the use of state time and equipment, reported in local newspaper article, affected public's respect for the

California Highway Patrol.) We conclude, therefore, that this was not an issue, i.e. harm to the public service (Department), that impacted the Board in determining the proper penalty to impose on Williams.

The actions of a law enforcement officer must be above reproach. (Anderson v. State Personnel Bd., supra, 194 Cal.App.3d at p. 769). Honesty and credibility are crucial to the proper performance of a peace officer's duties. (Ackerman v. State Personnel Bd., 145 Cal.App.3d at p. 400). The dishonesty of a peace officer had been defined as "a continuing trait of character" (Ackerman v. State Personnel Board, supra, 145 Cal.App.3d at p. 395) likely to result in harm to the public service (Paulino v. Civil Serv. Com. (1985) 175 Cal.App.3d 962, 972) justifying dismissal. In this matter, however, the trial court made it clear that there was no finding of dishonesty and no evidence of other falsehoods or failure to disclose any other incident was raised; thus there could be no finding of a "pattern" of repeated dishonesty, or of such a continuing character trait, which would justify dismissal. While recognizing that the Board may have concluded that there had been a series of falsehoods proven warranting Williams' termination, we find substantial support for the trial court's finding, after its independent review and reweighing of the evidence, that Williams' alleged misconduct consisted only of a failure to fully amplify his testimony in an otherwise consistent response to a lime of questions relating to the same matter reviewed in his earlier interviews.

Furthermore, an officer's lack of prior misconduct coupled with a long record of public service have, precedentially mitigated in favor of lesser penalties. (Lowe v. Civil Service Com., 164 Cal.App.3d at p. 677 - - suspension without pay rather than an outright dismissal was the appropriate penalty where sheriff had substantial experience in law enforcement without any previous disciplinary action and unusual circumstances leading to his misconduct.) In Richardson v. Board of Supervisors, supra, 203 Cal.App.3d 486, the finding of a grossly excessive penalty was supported

by evidence that the instance leading to an officer's discharge was a single, isolated incident that had occurred after an unblemished six and a half year record of public service during which the officer had received several commendations. No harm or danger to the county appeared by reason of his absences. (203 Cal.App.3d at pp. 494-495.) Here, Lieutenant Williams had served with the Department for approximately 20 years and had never been previously charged with misconduct..

While it is clear that the Department was limited to prosecuting Williams only for the offenses with which he was timely charged (i.e., not responding accurately to questions and not returning rented videotapes), we recognize that, as a practical matter, the distinction between the actual charges brought and the underlying behavior Williams was initially accused of is not so easily drawn. While we appreciate that it may be difficult not to take into account the circumstances surrounding the proven misconduct when fashioning the penalty for the offense charged, in this case that is precisely what must be done. As the trial court indicated, when it found that Williams had "failed to accurately respond" to the questions posed to him, the Board, in imposing punishment, should not have considered the issue of whether Williams had, in fact, don what Guidry had Harris had accused him of doing. Evaluating the severity of the punishment imposed on Williams is, therefore, limited to the consideration of the proper penalty for his act of "failing to accurately respond," rather than for the underlying acts of alleged sexual misconduct.

It appears clear from the record that the Board was punishing Williams for his alleged sexual impropriety and not for his failure to "accurately respond" to questions posed or to return the videotapes. In light of the limited nature of the accusations actually brought against Williams, the history of temperate penalties previously metered out in cases of similar officer misconduct and Williams' own commanding officer's recommendation, we find that the penalty of termination

imposed here by the Board was grossly excessive and thus constituted a manifest abuse of discretion.

The trial court acted appropriately when it directed the Board to fix the penalty to something less severe than that originally set (Richardson v. Board of Supervisors, supra, 203 Cal.App.3d 486) and not to consider the underlying complaints of sexual misconduct in determining what that penalty should be, clearly the statute of limitations prescribed by the city charter would be meaningless if we were to allow Williams' dismissal under these circumstances. As so aptly pointed out by the trial court: "To conclude otherwise [that the Board could consider the underlying offense in the imposition of the penalty for the offense actually charged] would be placing the court's imprimatur on the Board's ability to terminate a police officer with 20 years of unblemished service on the basis of charges time-barred by the Department's own rules."

DISPOSITION

For the reasons stated above, we affirm the order issuing the peremptory writ of mandate. Respondent Williams is entitled to recover his costs on appeal.

NOT TO BE PUBLISHED

ROWEN, J*

We concur:

ASHBY, ACTING P.J.

BOREN, J.

***Assigned by the Chairperson of the Judicial Council.**

[Last Page, #15]

APPENDIX M -1 REMITTITUR NOTICE OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE SECOND APPELLATE DISTRICT, DIVISION 5

Laurence B. Labovitz, Esquire
Laurence B. Labovitz
3055 Wilshire Blvd.

Suite 900
Los Angeles, CA 90010
RE: Williams, Ronald
Vs.
Los Angeles, City Of; Daryl F. Gates
2nd Civ. B035287
Los Angeles No. C667976

• REMITTITUR NOTICE * *

Notice is hereby given that the Remittitur has been issued this date and that the opinion, decision or order entered in the above entitled cause on 08/10/89 is now final.

Affirmed In Full

Respondent To Recover Costs On Appeal

OCT. 12, 1989

ROBERT N. WILSON, Clerk

By: J. Lepo

Deputy Clerk.

[End of Document, Remittitur Notice]

APPENDIX N - TRANSCRIPT OF BOARD OF RIGHTS PROCEEDING, ON REMAND FROM THE SUPERIOR COURT, POST TO THE AFFIRMING DECISION OF THE STATE COURT OF APPEAL

B.F. 9352

BOARD OF RIGHTS RATIONALE
ON PENALTY OF
RONALD WILLIAMS, 11916

CAPTAIN GARTLAND: The Board wants to make note that the city attorney remained in the board room to discuss with the Board opinions and the thinking and directions of the court in this matter. Prior to the Board deliberating on the penalty, the city attorney left the hearing room at 5:00 p.m.,.prior to the Board beginning its deliberations.

During the deliberations the Board reviewed Department's Exhibit 1 and Accused's Exhibit A that were presented to the Board today.

In reaching its penalty recommendation, the Board places importance on two particular factors which we feel merit special focus. First, the accused officer served as a high ranking officer in this Department. He attained a rank of Lieutenant II.

And, therefore, the penalty which might be sufficient with respect to a police officer or even a sergeant is not, in fact, sufficient in the case of a lieutenant.

Secondly, we believe that the penalty must reflect subject matter to which he failed to make adequate disclosure. It is this Board's unanimous opinion that failing to give full, complete and fruitful answers in response to an investigation about the subject matter of juvenile sexual abuse, a possible felony, is a more serious offense that failing to properly answer a routine inquiry about some administrative matter.

The consequences to this Department for a lieutenant who fails to properly answer questions on that subject in particular are potentially enormous and disabling.

Accordingly, on the basis of these factors, the Board unanimously recommends to the Chief of Police that you be suspended for a period of 30 days.

APPENDIX O: DECISION OF THE BOARD OF RIGHTS and EXECUTION OF THE ORDER (In re: above Item "I")

THE MATTER OF RE: COMPLAINT NO. 9352
RONALD WILLIAMS, 11916 DATED: JULY 30, 1987
TO THE CHIEF OF POLICE:

DECISION OF THE BOARD

The above-entitled matter came on regularly for hearing before this Board of Rights on the verified complaint of Daryl F. Gates filed with the Board of Rights Commissioners on August 4, 1987, all preliminary and jurisdictional requirements having been substantially complied with: The accused being present and represented by counsel, the Board having heard all evidence properly and legally offered and the accused given a reasonable opportunity to defend against the charges preferred.

After a full and impartial hearing on its merits, the Board deliberated and carefully considered all the evidence adduced before it at such hearing and upon such evidence and not otherwise base and hereby certifies its decision as follows: The Board finds that accused is Guilty of Counts 1, 2, and 3. . The Board therefore prescribes its penalty as follows: That RONALD WILLIAMS, 11916, be suspended from his position of LIEUTENANT for thirty (30) days, with total loss of pay, for thirty (30) days, with total loss of pay , effective August 5, 1987.

We hereby certify to the above:

"S"
W.O. Gartland, Chairman

"S"
F.J. Patchett, Member

December 8, 1989 "S"
R.O. Woods, Member

EXECUTION OF THE ORDER

To RONALD WILLIAMS, #11916, member of the Los Angeles Police Department:

Under the power conferred upon me by Section 202, Article XIX, Charter of the City of Los Angeles, I hereby **suspend** you from your position as Lieutenant in the Los Angeles Police Department for a period of (30) days with total loss of pay, effective August 5, 1987.

Original Signed By
Chief of Police

Dated December 4, 1989 "S" DARYL F. GATES
Chief of Police

[End of Document]

APPENDIX - P (excerpts) TRANSCRIPT OF PROCEEDINGS OF SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 88 HON. MARIAN A. VOGEL

RONALD WILLIAMS,
Petitioner, No. C 667 976
Vs.
CITY OF LOS ANGELES, a municipal corporation; et al.
Respondents.

TRANSCRIPT OF PROCEEDINGS
December 13, 1989

THE COURT: All right. This is Williams versus City of Los Angeles. Let's get the appearances on the record, please.

MR. LABOVITZ: Laurence B. Labovitz, for petitioner, RONALD WILLIAMS.

MR. HOTCHKISS: David Hotchkiss, Deputy City Attorney, for the respondents.

THE COURT: Mr. Hotchkiss, what's going on?

MR. HOTCHKISS: Sir - - your Honor, the --

THE COURT: Sir?

MR. HOTCHKISS: I'm thinking about something completely different.

The -- a monkey wrench has been thrown into the administrative process. We discovered late in the game that Ronald Williams retired from the Los Angeles Police Department effective August 1, 1987. The effect - - he filed for the pension after the Board of Right's decision and prior to coming to this court on the writ of mandate proceedings.

Under the charter of the City of Los Angeles, which controls the employment relationship, having voluntarily elected to take the pension benefits that were -- certainly he was entitled to, he now has changed his status from that of a -- of a discharged or now suspended officer to that of a retired officer.

*******END OF DOCUMENT******

APPENDIX Q (excerpts) TRANSCRIPT OF PROCEEDINGS OF THE SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES (continued from above-entitled proceeding of December 13, 1989)

DEPARTMENT 86 HON. DAVID YAFFEE, JUDGE

RONALD WILLIAMS,

Plaintiff,

Vs. No. C 667976

CITY OF LOS ANGELES, etc., et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

January 16, 1990

THE COURT: Number 11, Williams against the City of Los Angeles.

MR. LABOVITZ: Good morning, Your Honor -- Laurence B. Labovitz for petitioner, Lieutenant Ronald Williams.

MR. HOTCHKISS: Good morning, Your Honor - - David Hotchkiss, Deputy City Attorney, on behalf of the respondents.

THE COURT: Is this Mr. Williams? You Mr. Williams?

MR. WILLIAMS: Yes, Your Honor

THE COURT: All right.

This is an amended petition for writ of mandate. Mr. Hotchkiss, why shouldn't I grant this petition?

MR. HOTCHKISS: You should not grant this petition, Your Honor, because through the voluntary action of this individual on a date effective August 1, 1987, he retired from the Los Angeles Police Department and since that time has been receiving pension benefits as a retired Los Angeles police officer.

THE COURT: Didn't he do that by mistake?

MR. HOTCHKISS: No, Your Honor. There is nothing that indicates that there was any mistake whatsoever. Indeed, the declarations on file indicate that he knowingly in exhibit A signed under penalty of perjury that he was retiring from the Los Angeles Police Department based upon his years of service and pursuant to Article 18 of the Charter of the City of Los Angeles.

THE COURT: Well, wasn't the mistake that he thought that he could get his pension benefits and still continue to contest his administrative -- his discharge?

MR. HOTCHKISS: Well, Your Honor, that claim of mistake would seem to be completely contradicted by the declaration of Eudon Ferrell, a former Los Angeles -- excuse me -- a former Los Angeles police officer, a retired lieutenant

and an employee of the city attorney's office in the pension section.

He states that at or about the time that Ronald Williams was applying for this pension, he specifically advised him of the existence of 190.111 of the city charter which was a prohibition against reemployment if there was a retirement at the rank of lieutenant or above.

Every person is presumed to know the law, Your Honor, and specifically it is very clearly articulated in the charter in article 18 that this type of situation is barred; that is, public employment in the City of Los Angeles --

THE COURT: Whatever that is, turn it off.

MR. HOTCHKISS: -- public employment in the City of Los Angeles is governed by the Charter. The case authority we've put before you articulates the fact that public employment is a creature of statute. And if he's going to take the benefits of the retirement pension, he must take it under the terms and conditions of the charter under which he sought it.

Article 18 encompasses 190.111, and as a matter of law, he is prohibited from reemployment absent the request of the chief of police and then on a voluntary basis only for 90 days per year as set forth in 190.111, and he would continue to receive his pension benefits in that situation anyway.

Because public employment in California is a creature of statute, the statutory scheme controls. His mistake may be based upon improper advice from his counsel, but it certainly wasn't based upon improper advice from the City of Los Angeles, and there is --

THE COURT: Well, the City of Los Angeles certainly didn't help him realize that he made a mistake. The City of Los Angeles kept litigating his discharge on its merits after he had retired. Why did the city do that? . . . . . .

Didn't the city continue to contest in court his discharge after he retired? Why did the city do that?

MR. HOTCHKISS: The city did that because there was a very important question of law to be addressed in this

matter, and that is whether or not engaging in the three acts of misconduct which were affirmed by the Superior Court -- whether to discharge on that issue was an abuse of discretion as a matter of law. These types of cases --

THE COURT: Well, what difference did it make if he'd retired?

MR. HOTCHKISS: Your Honor, I didn't know about it until after the argument before Judge Vogel. Certainly Mr. Williams and his counsel never put me on notice of that fact. It was pure happenstance that I found out about the existence of the retirement ----------.

MR. LABOVITZ: ----------

We're dealing with two different cases here. This case has been fully litigated. And, Your Honor, I'd like to point out that the - -

THE COURT: What case has been fully litigated?

MR. LABOVITZ: The case of Lieutenant Williams on the issues of his entitlement to employment, we believe, has been fully litigated.

THE COURT: Well, what hasn't been litigated apparently is the question of the effect of his accepting his pension benefits on his right to reinstatement. That's what we're here about, isn't it? ------- Well, let's stick to that.

THE COURT: I'm going to grant the amended petition for writ of mandate. The petitioner applied for pension benefits in the belief that his receipt of those benefits would be without prejudice to his ability to continue to prosecute his pending claim for reinstatement.

The respondent told him nothing to indicate that such belief was incorrect and continued thereafter to resist such reinstatement on its merits.

The petitioner was laboring under a mistake and the respondent knew or should have known that such was the case. Therefore, we have a mistake on the part of one party known -- or which the other party knew about or should have known about, and that gives the petitioner the right in a court

of equity to rescind his application for pension benefits. He may do that by doing equity and tendering back to the respondent the benefits that he has received. In making such tender, he may offset against his repayment any back pay that is due him.

The respondent is ordered to reinstate the petitioner and pay him the back pay to which he is entitled less the amount of the pension benefits that have been paid to him.
[end of excerpt]

[End of Document, Judgment Amended Petition]

APPENDIX R - OPINION OF THE CALIFORNIA STATE COURT OF APPEAL, Division 5, DECIDED MAY 10, 1991

RONALD WILLIAMS, Plaintiff and Respondent v. CITY OF LOS ANGELES et al., Defendants and Appellants.

Summary

[Page 1627 - A former police lieutenant filed a petition for a writ of mandate to be reinstated to his former position. The lieutenant had been dismissed from his position for misconduct, but had successfully challenged the dismissal in a previous lawsuit, obtaining a reduction of the original dismissal to a suspension. However, after the dismissal and immediately prior to filing the original lawsuit, the lieutenant applied for his service retirement pension as the rank of lieutenant; the pension was granted and throughout the two years of litigation concerning his dismissal, the lieutenant received his monthly pension checks. Accordingly, the city refused to reinstate him, citing a city charter provision precluding the return to active duty of any police pension system member who has retired at a rank higher than sergeant. The trial court, finding that the lieutenant made a mistake in retiring on the erroneous assumption that he could return to work if he ultimately prevailed in his lawsuit, ruled that he

could rescind his retirement on the ground of mistake. The trial court ordered that he be reinstated, subject to reducing his award for backpay by amounts received for his retirement. (Superior Court of Los Angeles County, No. C667976) David P. Yaffe, Judge.)

The Court of Appeal reversed, holding that, having elected to take his retirement pension, rather than withdrawing his contribution to the pension fund the lieutenant was precluded from returning to active duty under the charter provision. Based on the evidence in the record, the court held that the lieutenant's belief that he could return to work after retirement was a unilateral mistake, not induced or knowingly taken advantage of by city officials, and that, accordingly, the lieutenant was not entitled to rescind his retirement application. The court also held that the city's defense of the lieutenant's original lawsuit on the merits of the dismissal did not estop the city to enforce the charter provision. (Opinion by Ashby, Acting P.J., with Boren and Grignon, JJ., concurring.)

[Page 1628, ---- In a proceeding in mandamus by a former police lieutenant who had been dismissed for misconduct but had successfully challenged the dismissal in a previous lawsuit, the trial court erred in ordering the lieutenant's reinstatement, where, prior to his filing of the previous lawsuit, he applied for and was granted his service retirement pension at the rank of lieutenant, and where a city charter provision precluded the return to active duty of any police pension system member who had retired at a rank higher than sergeant. Having chosen to take his retirement pension, rather than merely withdrawing what he had contributed to the pension fund, the lieutenant had "retired" within the meaning of the charter provision, and any belief by the lieutenant, while represented by counsel, that he could return to work if he ultimately prevailed in the previous lawsuit, was a unilateral mistake, not induced or knowingly taken advantage of by city officials. Thus, the trial court erred in determining that he was entitled to rescind his retirement application.

In a proceeding in mandamus to compel a city to reinstate a former police lieutenant who had been dismissed for misconduct but had successfully challenged the dismissal in a previous lawsuit, and who had applied for and was granted his service retirement pension immediately prior to filing the previous lawsuit, the trial court erred in ruling that the city's continued defense on the merits of the dismissal suit barred the city from applying a city charter provision precluding the return to active duty of any police pension system member who has retired at a rank higher than sergeant. The city, as an involuntary defendant and adverse party to the lieutenant, had the right to defend the dismissal and owed no duty toward the lieutenant, who was represented counsel, to advise him of the consequences of the litigation.

[Page 1629 - Opinion

ASHBY, Acting P.J. - The City of Los Angeles (City) and its chief of police appeal from a judgment granting peremptory writ of mandate compelling them to reinstate respondent Ronald Williams to his former position as a lieutenant in the Los Angeles Police department.

Respondent was dismissed from his position for misconduct. He filed a previous petition for writ of mandate to be reinstated in his position, primarily on the ground that the findings of misconduct did not support the penalty of dismissal. That litigation, which lasted approximately two years, was ultimately resolved in respondent's favor. Pursuant to a previous writ of mandate, the police board of rights reconsidered the penalty and recommended a 30-day suspension.

However, at the time he filed his original petition for writ of mandate challenging his dismissal, respondent also applied for and was granted his 20-year service retirement pension at the rank of lieutenant. Throughout the litigation concerning his dismissal he was receiving his monthly pension check.

Under section 190.111 of the Los Angeles City Charter, a member of the police pension system who has

retired at a rank higher than sergeant cannot return to active duty. Citing the charter, the City refused to reinstate respondent despite the reduction of the original dismissal to a suspension.

Respondent filed the instant amended petition for writ of mandate seeking to be reinstated notwithstanding his retirement. The trial court found that respondent made a mistake in retiring on the erroneous assumption that if he ultimately prevailed in his lawsuit, he could return to work. The court held respondent could rescind his retirement on the ground of mistake; the court ordered that respondent be reinstated, subject to reducing his award for back pay by the amounts respondent received for his retirement. This is the judgment from which the City now appeals.

We reverse. Respondent elected to take his retirement pension, effectively converting his property right of continued employment into a property ***PAGE 1630 - right to a pension. Respondent should have known this would preclude his return to active duty. Respondent's mistake was unilateral. The City did not induce respondent's mistake or take knowing advantage of it. The City's defense of respondent's lawsuit on the merits of the dismissal did not estop the City to enforce the charter provision.

Background

Article XVIII, section 190.111 of the Los Angeles City Charter governs the return of retired members to active duty. It permits the chief of police to accept an application of a retired member to be returned to active duty only if certain conditions are met. The first and controlling condition is stated in section 190.111, subdivision (A)(1): "A retired member, whenever retired, may file, with the Chief of the department from which he retired, a written application to be returned to active duty therein *only upon the conditions:* (a) that his original retirement had been **pursuant to Section 190.11 [retirement for years of service] and had been . . . from the Police Department *while holding a rank no higher than Sergeant,* . . .** (Italics added.)

Respondent, having retired at the rank of lieutenant, does not qualify. This section precludes a retired lieutenant from returning to active duty. This section may be intended to limit number of high ranking positions in the department to persons who have not previously retired.

Respondent Retired

(1a) In the trial court and on appeal respondent suggested that he never really "retired"; he merely "withdrew" his "pension benefit". This claim is wholly contradicted by the record and apparently was not believed by the trial court[4].

Respondent's formal application stated, "your petitioner prays that he be retired from active service in the police Department, by reason of years of service and that he be paid a pension from the Fire and Police Pension Fund in accordance with the provisions of Article XVIII of the Charter of the City of Los Angeles." The department of pensions notified respondent that "[y]our application for a service pension was presented at a regular meeting *** * * PAGE 1631** - of the Board of Pension Commissioners held December 10, 1987 and you were granted a pension pursuant to the provisions of article XVIII of the City Charger, in the amount of $1,872.88 a month ***effective*** **August 1, 1987.**

Even respondent's own evidence failed to support his claimed distinction between retirement and withdrawal. Respondent's handwritten letter of November 5, 1987, to the board of pension commissioners states, "This is a request for the Board to institute my Pension Plan Payments . . . I have served as a member of the Los Angeles Police for the twenty-year period required . . ." His handwritten letter of November

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[4] **Mr. Labovitz [respondent's counsel] All right, Your Honor, the issue as we see it is whether his withdrawal of his legally vested pension benefits con--**

"The Court: Well, that's not what he did, he didn't withdraw his legally vested pension benefit. He didn't just take out what he had contributed fund, did he? He took a lifetime pension of so many dollars a month."

17, 1987, requested a change in the effective date of his pension." Respondent's own declaration showed that he understood the difference between a lifetime monthly pension and withdrawal of his contributions to the system.[2] Knowing that distinction, respondent chose to take his pension rather that to withdraw his contributions.

Respondent's claim that department of pension records showed he never really retired is based on respondent's fallacious assumption that taking his monthly pension is not the equivalent of retiring. Correspondence from the department of pensions to respondent consistently referred to respondent's "Pension." The fact that this correspondence did not also use the term "retirement" is insignificant. Respondent also referred to a document which appears to be a roster of pensions granted. Although a "Remarks" section of this document states "Terminated from P.D., the document still shows that a pension was granted in the amount of $1,872.88.

On appeal respondent contends that section190.16 of the charter recognizes a distinction between a system member who is eligible to "retire" and a *former* system member who is eligible to "be paid a pension." The claimed distinction in section 190.16, however, does not help respondent as to section 190.111, which precludes the return to active duty of a "retired member" who retired at a rank higher than sergeant. "Retired Member" is defined in section 190.02(I) to mean "a person who is a former System Member whose active status as a Department Member had been terminated and who is receiving a pension pursuant to this Article." Thus, respondent is a retired member for the purpose of section 190.111 regardless whether his pension was paid under the authority of section 190.16(3).

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[2] **Respondent declared, "That I was counseled at that time by Mrs. Mary F. Washington of the Department of Pensions, who indicated that since I was terminated and did not retire, I was entitled to withdraw all of the contributions to the Pension Board, but that if I did so that [sic] I would forego any future ability to draw a lifetime monthly allotment." (Italics omitted)**

• * * **PAGE 1632** - Finally, respondent contended at oral argument in this court that he is "not seeking reemployment but reinstatement" This distinction also fails. Section 190.111 does not refer to refer to reemployment but return to active duty. Respondent seeks return to active duty but does not meet the necessary conditions.

Respondent's Mistake was not Induced by City Officials

Respondent claimed in his declaration that at the time he applied for pension benefits "I specifically discussed this situation with Deputy City Attorney Eudon Farrell [sic], a counsel to the Pension Board, who advised me that the standard request document was the only form available to trigger payment of vested pension benefits, and further specifically advised me that in the event I was successful in my Superior Court litigation, and reinstated, I would have to repay the Pension Board all monies received." (Italics omitted")

The declaration of Eudon Ferrell showed that respondent's declaration omitted crucial portions of the conversation. Ferrell was a deputy city attorney responsible for advising the department of pensions. He was also himself a retired Los Angeles police officer who was well aware that charter section 190.111 prohibited the return of an individual retired at the rank of lieutenant. He declared, "I first met Ronald Williams while employed by the Los Angeles Police Department. I have known Ronald Williams for approximately 20 years. I have read the declaration of Ronald Williams dated January 9, 1990 and I am familiar with the contents thereof. Specifically, in paragraph 5, Ronald Williams states that he had a conversation with me on or about November 5, 1987. He states that I specifically advised him that in the event he was successful in his Superior Court litigation, and reinstated, he would have to repay the Pension Board all monies received. This is not correct. I did have conversation with Ronald Williams when we met by happenstance in my office sometime in the fall of 1987. **He told me that he was in trouble and that he was retiring from the Los Angeles**

Police Department. *I specifically reminded him of the provisions of Los Angeles City Charter 190.111 which prohibited the reemployment of an individual by the Los Angeles Police Department if he retired at the rank of lieutenant or above. Mr. Williams told me that he had spoken to his attorney and that he was confident of ultimate success. I expressed I was somewhat skeptical because if a judge issued such an order, it would fly directly in the face of the clear prohibition set forth in the Los Angeles City Charter. I further stated that I did not know what the outcome would be. In any event, I stated that he could not have it both ways and could not have a double payment of both salary and pension benefits.* Except for that brief and unplanned meeting in the fall of 1987, I cannot recall any further conversation that I have had with Ronald Williams. Sometime after my conversation * * * **PAGE 1633** - with Ronald Williams, I did receive a telephone call from his attorney, Laurence Labovitz. Mr. Labovitz asked me to confirm in essence the allegation set forth in paragraph 5 of Ronald Williams' declaration. I denied to Mr. Labovitz that I had made such a statement and further advised him that Charter 190.111 prohibits the reemployment of an individual at the Los Angeles Police Department if he or she retires at the rank of lieutenant or above. (Italics added)

Chronology of Raising the Retirement Issue in the Dismissal Litigation

A factor in the trial court's ruling, discussed post, appears to have been a delay by the City before raising the issue of charter section190.111 in the dismissal litigation. The following chronology is useful.[3]

10-19-87	Removed was removed from office, ***effective 7-30-87.***
11-5-87	Respondent applied for service pension.

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[3] **We take judicial notice of the file in a previous appeal of the dismissal case, Williams v. City of Los Angeles (Aug. 10, 1989) B035287 [nonpub. Opn.] (Evid. Code 452, subd. (d), 459.)**

11-16-87	Respondent filed in superior court his petition for writ of mandate to restore him to employment.
12-10-87	Respondent's application for service pension was granted by the board of pension commissioners which arranged for respondent to begin receiving monthly pension checks.
2-2-88	The trial court issued its (first) writ of mandate ordering the police board of rights to reconsider the penalty
4-7-88	The trial court issued its (second) writ of Mandate compelling the board to reconsider the Penalty at less than dismissal
5-31-88	Deputy City Attorney S. David Hotchkiss, who represented the City in the dismissal litigation and who was considering whether to appeal the second writ of mandate, wrote a letter to respondent's counsel suggestion a stipulated suspension in lieu of an appeal by the City. *In this letter attorney Hotchkiss raised for the first time* the argument that whatever the outcome of the dismissal litigation, respondent could not be reinstated because he had retired,[4] but the board sustained respondent's objection to such

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[4] In his declaration submitted to the trial court on the current amended petition, attorney Hotchkiss stated that he did not know of respondent's retirement until after the trial court hearing on the second writ of mandate. "When I learned of the fact of Ronald Williams' retirement I was completely taken by surprise. In my 9 years of representing the Los Angeles Police Department in writ of mandate proceedings pursuant to Code of Civil Procedure 1094.5, I have never before experienced a situation where an officer both retired from the Los Angeles Police Department and sought relief from the Superior Court in a mandamus proceedings. Undoubtedly, this is so because of the strict prohibition and/or limitations in the City Charter against reemployment set forth in Los Angeles City Charter 190.111(A)(1)."

evidence on the ground the board's only proper function was to determine the proper penalty for misconduct. The Board reduced the penalty to a 30-day suspension.

Respondent filed his amended petition for writ of mandate in the proceedings now under review, contending that his retirement was not a proper ground for refusing to reinstate him.

Trial Court Ruling

At the hearing the trial court stated, "I'm going to grant the amended petition for writ of mandate. [Respondent Williams] applied for pension * * * **PAGE 1634** - benefits in the belief that his receipt of those benefits would be without prejudice to his ability to continue to prosecute his pending claim for reinstatement. [The City] told him nothing to indicate that such belief incorrect and continued thereafter to resist such reinstatement claim on its merits. [Respondent Williams] was laboring under a mistake and [the City] knew or should have known that such was the case. Therefore, w have a mistake on the part of one party . . . which the other party knew about or should have known about, and that gives [respondent Williams] the right in a court of equity to rescind his application . . . for pension benefits.

Discussion

(2) The trial court erred in holding that the City's continued defense on the merits of the dismissal suit bars the City from applying the charter provision. The defense of the dismissal litigation occurred after respondent had already retired. It is not relevant to the relationship of the parties at the time of the retirement application, which is the transaction the trial court rescinded on the ground of mistake.

Furthermore, the City as involuntary defendant and adverse party to respondent had the right to defend the dismissal and owed no duty toward respondent to advise him of the consequences of the litigation. The deputy city attorney representing the police department and chief of police in the dismissal litigation did not have actual knowledge of

respondent's retirement, which was arranged between respondent and the board of pension commissioners or department of pensions. (Fn.4, ante, p. 1634) Even assuming, as the trial court apparently ruled, that one department should be held to the knowledge which another department has, the proper focus should be on the City's knowledge at the time of the retirement application, not the subsequent litigation.

The record shows that at the time of the retirement application respondent was represented by counsel. Respondent casually spoke to an acquaintance, Deputy City Attorney Eudon Ferrell, who represented the pension department. Far from inducing respondent's mistake or sitting idly by, Ferrell actually attempted to warn respondent that under the charter respondent could not subsequently be reinstated if he retired.

The trial court's ruling cannot be sustained on the assumption that the court resolved conflicts between declarations of respondent and Ferrell. The declarations did not conflict, because respondent's declaration did not address or meet the crucial point. Respondent merely stated that Ferrell told him, *"[I]n the event* I was successful in my Superior Court litigation and reinstated, I would have to repay the Pension Board all monies received." Ferrell's declaration showed that such statement came *after* Ferrell specifically warned respondent that in his opinion the charter clearly prohibited reinstatement if respondent retired. Only after expressing such skepticism did Ferrell state that, "*In any event,* [respondent] could not have it both ways and he could not have a double payment of both salary and pension benefits." (Italics added)

Thus, the trial court's remark that the City "told[respondent] nothing to indicate that such belief was incorrect and continued thereafter to resist such reinstatement claim on its merits" refers to the delay in raising the retirement point in the subsequent dismissal litigation. It does not refer to the City's conduct or knowledge at the moment of the retirement application.

Otherwise, the court's statement is not supported by substantial evidence.

(1b) The record thus shows that respondent's belief, while represented by counsel, that he could take his retirement pension but still be reinstated later, was a unilateral mistake. I was not inducted or knowingly taken advantage of by City officials. Respondent did not establish that he was entitled to rescind his retirement application. (Civ. Code 1578, subd. 2; Carr v. Sacramento C.P. Co. (1917) 35 Cal.App. 439, 446 [170 P. 446] Bowman v. Payne (1921) 55 Cal.App. 789, 796 [204 P. 416]

Although respondent cannot be reinstated because he has retired, the resolution of the dismissal litigation had the beneficial effect of clearing respondent's employment record of the dismissal.

The judgement is reversed with directions to the trial court to deny the amended petition for writ of mandate. Costs on appeal are awarded to appellants.

Boren, J. and Grignon, J., concurred.

APPENDIX S - (subject) COMPLAINT FOR DECLARATORY JUDGMENT; INJUNCTIVE RELIEF, Supporting Exhibits "A" through "H"

RONALD WILLIAMS
3410 West Fifth Street, #215
Los Angeles, California
Plaintiff in Propria Persona

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD WILLIAMS, **Plaintiff,**
-v-
CITY OF LOS ANGELES **Defendant.**

CV No. 93-2873 MRP
COMPLAINT FOR
1. Declaratory Judgment [28 U.S.C. 2201, FRCP 57]
2. Injunctive Relief [28 U.S.C. 2202]
[Supporting Exhibits "A" through "H", etc.]

PLAINTIFF PROPRIA PERSONA ALLEGES:

General Allegations

1. This is a "collateral" action in law and equity authorized and instituted pursuant to the Declaratory Judgment Act of 1948, under 28 U.S.C. 2201, and Federal Rules of Civil Procedure, Rule 57; and an action for Injunctive Relief under 28 U.S.C. 2202.

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sections 1331, 1343 et seq., and pursuant to the "Expost Facto Clause at Article 1, Section 10 of the United States Constitution; the Fifth and Fourteenth Amendment of the United States Constitution; 29 U.S.C. 623(d); and 42 U.S.C. 1983.

3. This Court is with current jurisdiction of Plaintiff's action alleging two separate and distinct claims pursuant to the Civil Rights Act; 42 U.S.C. 2000e et seq. (Title VII), and 42 U.S.C. 1983. [CV-90-1252 AWT (GHKx) filed 3-14-90]

4. A justiciable controversy exists between the parties: The action for a declaratory judgment is for the purpose of determining the question of actual controversy between the parties as follows:

a. On February 2, 1988 the California Superior, and on August 10, 1989 its Court of Appeals, entered and perfected judgment, in Plaintiff's favor, for writ of mandate that commanded Defendant City to set aside its order of discharge of Plaintiff from employment. [Calif. Sup. Ct. No. C667976; and, and Cal.App.2nd Civ. B035287 (Aug. 10, 1989) A *copy of the judgment and writ of mandate of the California Superior court therefore , and a copy of the "affirming" opinion thereof, is hereto annexed, designated Exhibits "A" and "B", respectively, and made a part hereof.*

b. On May 10, 1991 the California State Court of Appeals, by published opinion, reversed itself by vacating the above referenced order(s): it deemed that, for the purpose of Defendant City's relief from the remedy therein that had restored Plaintiff's employment property interest, he was "retired" and that this was in accordance with the City's pension ordinance scheme. Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) A copy of the *"published opinion thereof, is hereto annexed, designated Exhibit "C" and made a part hereof.*

5. The instant petition seeks declaratory judgment that the just-referenced "order to vacate" is unconstitutional, invalid, and in contravention with all applicable State and local statutes: Including the statute-at-issue - Los Angeles Police and Fire Pension ordinance Section 190.111: It will demonstrate the order, as issued on May 10, 1991 by the State Court of Appeals; as a state court order invalidated by the California Constitution and State Statutes; and, as enforced against the previous order(s) of the California Courts, (herein Exhibit "A" and "B") deprived Plaintiff's constitutionally protected property interest to pubic employment; the property-interest subject too and previously restored by those orders.

6. The amount in controversy exceeds $10,000, exclusive of interests and costs. If the prayer of relief from the instant complaint is granted, the property-interest to employment as a Lieutenant of Police with Defendant's police department will be restored. It is one in the same interest that the primary action in Civil Rights seeks to vindicate as subject of Plaintiff's deprivation by Defendants and for reasons that were race based.

7. Furthermore, if the questions raised by the instant collateral complaint are forthwith answered by the Court, this will aide in a speedier and more just resolution of the primary Civil Rights Action: It will estop Defendant City of Los Angeles' continuing litigation practices of raising inconsistent defenses to the Title VII claim which the record demonstrates as follows:

a. On April 6, 1990 in the "special defense" motion filed with the Court in the Civil Rights action, Defendants contended that the discipline that had been imposed by them against Plaintiff, including two separate incidents of discharging him from employment, had been proper; because the Court found good cause for discipline. Hence, admitted was that on two occasions Plaintiff was subjected to discharge from employment. [see docket #3, Clerk's record of federal action]

b. On July 10, 1992, in the second "special defense" motion filed by Defendants in the Civil Rights action, and its first defensive response subsequent to the judgment of the California State Court of Appeals - Williams v. City of Los Angeles, 229 Cal.App.3d id. (May 10, 1991) - Defendants contended that Plaintiff's property-interest in employment was lost under proper disciplinary circumstances; and, in reliance upon the just referenced opinion, he had also retired from his employment. Hence, the defense was that he was discharged and that he had retired. Subsequent rejection of the dual defense by the Court has not curtailed Defendants maintaining these defenses. As recent as September 22, 1992 in a not timely answer to the instant complaint, Defendants

have again raised the inconsistent, dual defenses. [see docket #74, Clerk's record of federal action]

c. On January 11, 1993 and on March 31, 1993 Defendants, in reliance upon the State Appellate case of May 10, 1991, now contend that Plaintiff had not, at any time, suffered a discharge by them from his employment: That, pursuant to the 1991 decision, he "retired" from employment before Defendants could discharge him from employment. *A copy of the excerpts of Defendants' appellee's brief therefore, is hereto annexed, designated Exhibit "D" and made a part hereof.*

8. Each of the three sets of contentions as constituting the findings of the California State Court of Appeals are false: they are Defendants' continuing bad faith litigation practice of obfuscating the issues that were resolved by the California courts in two separate but distinct judicial forum: the first culminating by the August 10, 1989 State Appellate decision of Plaintiff's wrongful termination (herein Exhibits "A" and "B"); and, the second culminating with the May 10, 1991 State appellate decision that the post discharge pension constituted legal avoidance of remedy perfected with the 1989 decision - restoration of Plaintiff to employment.

9. The action in declaratory judgment, at this time, will resolve that: (1) plaintiff as having been wrongfully discharged, and under circumstances highly probative of racial employment discrimination; (2) that the State court's ultimate decision of Plaintiff's retirement is unconstitutional; and (3) Defendants are without legal justification to interpose in the Civil Rights action, the inconsistent and alternating defenses of Plaintiff's discipline by discharge, and that he had also retired, and, (4) further establish, particularly from the July 10, 1992 motion to dismiss the federal complaint; as an action which sought dismissal of the Title VII claims from the results of the May 10, 1991 State appeals decision was an act of abuse of the federal court process: [it] sought use of the waiver clause of the City's pension ordinance plan, [that] was falsely raised by [the] Defendants and [that was] unconstitutionally

constructed and enforced by the State court[s], as legal justification to further waive Plaintiff's [federal] right to maintain the action under Title VII.

Plaintiff Also Alleges:

Parties' Legal Relationship(s)

10. At all times mentioned herein, Defendant City of Los Angeles was and is:

a. a Charter City duly organized and existing under the laws of the State of California; and,

b. an employer engaged in industry and commerce that employs in excess of 30,000 employees.

11. At all times mentioned herein, The Los Angeles Police Department was and is:

a. operating under the authority of the Charter for the City of Los Angeles; [Article XIX, et seq.]

b. under which the Chief of Police (herein Defendant Gates as then-Chief of Police) is vested as the "appointing authority" and administrator of the Los Angeles Police Department, and the final policy and decision-making authority for all departmental personnel, policy, practices and procedures. This include(ed) exclusive jurisdiction to remove by "disciplinary" discharge, any duly sworn and appointed member of the police department.

12. A copy of the relevant Charter provisions vesting discipline jurisdiction to the Chief of Police, as described, (Article XIX) is hereto annexed, designated Exhibit "E" and made a part hereof.

13. At all times herein mentioned, the office/position of Lieutenant of Police, Los Angeles Police Department, the subject-property interest, was and is to its holder:

a. an interest subject to protection under the privileges and immunities clauses of the United States Constitution, including the Fifth and the Fourteenth Amendments thereof;

b. a fundamental, vested property right of public-employment, subject to the protection of the California Consti-

tution and under the general laws (remedial) of the State, inclusive is;

c. [the] right of access to the superior court of the State for redress and for remedy from acts on the part of an employer, here, Defendant City of Los Angeles, and against an employee, here, Plaintiff, that wrongfully deprives such employee or otherwise interferes with his right to continuous public employment.

Plaintiff further alleges:

14. On **October 19, 1987,** Defendant Daryl Gates, in the capacity as then-Chief of Police, subjected Plaintiff to a discharge from his employment for alleged "disciplinary" reasons. *A copy of the "discharge" order is hereto annexed, designated Exhibit "F" and made a part hereof.*

15. On **November 5, 1987** while the "discharge" was in full force and legal effect, but in accordance with Section 190.16(3) of the Los Angeles Police and Fire Pension System Plan, Plaintiff filed application with the City's Department of Pensions and its Board of Pension Commissioners for payment of pension benefits. *A copy of the provisions of the just-referred System Plan is annexed, designated, Exhibit "G" and made a part hereof.*[1]

16. On **November 11, 1987** while the "discharge" was in full force and legal effect, and during pendency of the board of pension's consideration of the pension application, Plaintiff filed petition for writ of mandate with the State superior court for order to set aside the"discharge" from

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[1] The pension application's language specified that the applicant seeks retirement from active duty as a police officer from the department. However, plaintiff had been discharged prior to the application. Therefore, he was without capacity to be retired by the pension board. The application sought payment of vested pension benefits as provided on behalf of previously discharge[d] employees under Section 190.16(3). That the Board recognized the distinction of Plaintiff's application is shown from the letter from it to Plaintiff of notification of approval of the application. Therein, the letter specified **only** that pension plan payments had been approved by the board. A copy of the letter of approval is hereto annexed, designated Exhibit "H" and made a part hereof.

employment. [Calif. Sup. No. C 667976] Based on the pleadings of the parties, - *plaintiff's writ, and defendant City's defensive response* - the superior court exercised plenary jurisdiction of the parties and subject matter.[1]

17. On **December 10, 1987** while the "discharge" order was still in full force and legal effect, the Board of Pension Commissioners granted Plaintiff's pension plan payment application. (letter of approval - herein Exhibit "H")

18. On **February 2, 1988** and because the "discharge" order was still in full force and effect, the Superior Court conducted what would be the first of three hearing[s] on Plaintiff's petition for writ of mandate.

19. Ultimately, Plaintiff's petition for writ of mandate was resolved in his favor by opinion, decision and judgment of the California State Court of Appeals. (herein Exhibit "B", affirming Exhibit "A") It is these decisions that the instant petition seeks the Court's enforcement, and it is the set aside of the judgment therefrom by the State Court of Appeal's subsequent order (herein Exhibit "C") that the instant petition seeks to invalidate as being unconstitutional.

Plaintiff Finally Alleges

Actual Substantial Justiciable Controversy

20. Approximately two years after the order that affirmed the superior court judgment that, as entered, commanded Defendant City of Los Angeles to set aside its order that discharged Plaintiff from his employment, (herein

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[1] At close of first hearing the matter was remanded to defendants administrative board and plaintiff was again discharged. At close of the second State Court hearing the matter was again remanded to defendant's administrative board. However, defendants' appealed order of second remand, but the Court of Appeals upheld the lower court's order. Thereafter, defendant's administrative board pursuant to the second, affirmed remand order, reduced plaintiff's penalty from discharge to an "announced" suspension for a period of thirty-days. However, the penalty was not served. Because, following its imposition, Defendant City subsequently convinced the Court that from the entire period from the date that pension benefits had been ordered by its Board on Plaintiff's behalf, he was in retirement.

Exhibit "A") the State Court of Appeals reversed itself and vacated the discharge set aside order. (herein Exhibit "C")

21. The reversal/set aside order - Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) - is supported by a "court made" condition of waiver, that, on Defendant City's urging, was falsely constructed from Section 190.111 of its pension ordinance scheme.

22. The "waiver" was then applied by the State Courts, - trial and appellate - as of the **May 10, 1991** decision: to the transaction that had taken place on **December 10, 1987**, which was the date that the City's Board of Pension Commissioners had approved pension plan payments on Plaintiff's bahalf; which Plaintiff had applied [for] on the sixteenth day **(November 5, 1987) following** the execution by the Chief of Police of the order that discharged him from employment. (order, herein Exhibit "F")

23. Now the State appellate court held, with its **May 10, 1991** decision, that, the order approving Plaintiff's pension benefits and pursuant to 190.111, waived all further claims to be reinstated to his employment; and,

24. the waiver applies to the claim filed in State court subsequent to the pension application (**November 11, 1987**) that, in fact, had restored Plaintiff's property-right to employment. (herein Exhibit "A" and "B")

25. Hence, the State appellate court, with its **May 10, 1991** decision held: that the Defendant City's grant of pension plan payments by its Board of Pension, and on Plaintiff's behalf, further constituted a "waiver" by him of state-created rights to bring suit against the City from the discharge; including the suit he did bring and the judgment for reinstatement (that was) gained.

26. Hence, in Williams v. City, 229 Cal.App.3d 1627 (May 10, 1991) the law-of-the-case: *a person of the rank of lieutenant of police or higher who is discharged from employment by order of the Chief of Police; waives right to remedy for restoral to employment, if he acts to apply for*

pension benefits and such application is approved by the City's Board of Pension Commissioners.

27. The waived right, as applied in Plaintiff's case, as retroactive to defeat the reinstatement remedy (granted) from the (previously settled) claim writ of mandate, (that was) filed subsequent to the discharge and subsequent to [the] pension application; and, (that was) perfected by the State Court of Appeal's decision of August 10, 1989. (herein Exhibit "B", affirming Exhibit "A")

28. Hence, the post-discharge application and approval for pension benefits was construed as governed under Section 190.111 of the City's pension ordinance scheme as fatal and preemptive of all state-created rights for redress and remedy from the discharge: Including, as Plaintiff's case, where the remedy had since been granted, from proof that the discharge was wrongful.

29. Defendant City has since, by motion, sought to extend Section 190.111 as preemptive of constitutional and federal rights as to the claims of the primary action under Title VII.

30. The false construction of Section 190.111 as the pension as a waiver, was accomplished by Defendant City and the State appellate court's: **(1)** failure to give significance to every relevant phrase of the subject pension plan; **(2)** failure to ascribe statutory language as defined by the plan or give significance to its plain meaning language; **(3)** failure to give effect to the pension plan as a whole; and **(4)** rendering the provisions of the pension system plan partially void - **particularly Sections 190.16(3) and 190.11.**

31. The statutory language of the subject pension plan: (herein Exhibit "G", at section 190.02) coupled with its "plain meaning language", provides as follows:

a. A person becomes eligible for payment of pension plan payments in one of two ways: **First,** upon application before and approval of such application, by and on behalf of a duly sworn and appointed member of the Los Angeles Police Department, to be retired from active duty and

to be paid pension benefits; provided such person had served the pre-determined number of years of service for benefits to have vested (20) - **Section 190.11 -** [(exhibit) "G" @ p.101]

b. **Second,** upon (the) application before and [the] approval of such application, by and on behalf of a pension who was previously discharged from the police department, by order of the Chief of Police - provided such pension before being discharged, had served the pre-determined number of years for the benefits to have vested (20) - **Section 190.16(3) ["G", p.107]**

c. A **"Retired Member"** is either person: pension incidental to being "retired" from active duty (employment) by order of the Board of Pensions; or, pension incidental to being discharged from employment, by the Chief of Police. **["G" @ p.75]**

d. A person achieves **"Retired Member"** status of and with the Los Angeles Police and Fire Pension System: upon his employment status having terminated from either of the above described reasons, and upon order granting pension plan payments and upon receipt of first pension check. [Section 190.02(I)]

e. A **"Retired Member",** "whenever retired": **(1)** is a[ny] person who [already] has been approved and is being paid pension plan payments, regardless the manner which [his] employment status ended; and, the term "whenever retired" **(2)** means that the person had been retired from police officer employment, by order of the Board of Pensions while such person was on active duty, and, from active duty.

32. The origin of what was to become the construction of Section 190.111 as containing a "waiver provision" within the Los Angeles Police and Fire Pension System Plan, commenced with Defendant City's **false** contention to the State court(s): **(a)** that **all persons** in receipt of pension plan payments are person(s) within the meaning of Section 190.111 of its provisions; and **(b)** plaintiff having attained the rank of lieutenant of police, and, accordingly,

Plaintiff having been approved for payment of a pension, is precluded from return to active duty.

33. Conversely, Defendant's first contention **"(a)"** was **false**, in that, Section 190.111 covers (reaches by statute) **only** those persons who had been **retired from active duty by the City's Board of Pensions and had been approved pension plan payments incidental to having been so retired.** The section taken as a whole, and its remaining plain meaning language evinces its operation as **"permissive"** as to enable police officers who had retired (in good standing) opportunity to apply for return to active duty for limited duration, and it confers authority to the chief of police to accept and approve such application. **Section 190.11**, as the first condition of **Section 190.111**, limits the latter['s] operation and jurisdiction as to **only** persons whose employment status ended by being **ordered retired.** ["G" @ p.101 and "G" @ p.102]

32[1]. Conversely, Section 190.111 **does not extend** to persons who are in receipt of pension plan payments, but as incidental to first being discharged from employment as a police officer by the chief of police: This was Plaintiff's status when he applied for pension benefits. Therefore, he was not a person reached by Section 190.111

33. The purpose for Defendant City's **false** inclusion of plaintiff as within the person of Section 190.111 was to avoid the previous remedy he had gained with the Court's judgment for reinstatement. (herein Exhibits "A" and "B") By convincing the Court that Section 190.111 was **all inclusive** as to all persons in receipt of pension plan payments, Defendants were able to rely upon the exclusion that the Section held to persons of Plaintiff's civil service rank as **not** being eligible to apply for **rehire,** as a **statutory bar** to his [prior] judgment for **reinstatement.** Even though as an

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[1] The complaint was inadvertantly mis-numbered from this 32 and the next number 33. The complaint was consecutively numbered from the second number 33 on.

employee **discharged** and not having been **retired,** the issue was **reinstatement,** rather than being **rehired from retirement.**

34. However, by convincing the Court that an approval of pension payments renders the beneficiary as one in the same person as being retired or being discharged, Defendants were able to convince the Court to change the claim of the action from one for **reinstatement, to one to be rehired.**

35. After having **falsely** relegated Plaintiff to the reach and application of Section 190.111 as described, Defendant City [received court] nullification of Section 190.16(3) as the authority he cited before the Court under which he had been approved pension plan payments: By (City) denial that Section 190.16(3) held any legal relevance to the dispute. Even though by its operation as a preemptory mandate, (see section 190.16 - preamble) it superseded Section 190.111 as controlling authority for the order that had approved Plaintiff's pension plan payment by the pension board's order of **December 10, 1987.** (herein Exhibit "G")

36. Hence, it was from Defendant City's false representation of the pension ordinance scheme as described: was the origin of the State Court of Appeal's **May 10, 1991** decision (herein Exhibit "C") that supported, entirely, its legal justification to set aside, this vacate the orders previously made that restored Plaintiff to his employment. (herein Exhibit "A" and "B")

37. Concerning the law-of-the-case Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) as invalid, unconstitutional, and as a fundamental misapplication of applicable rules: (herein Exhibit "C")

38. The law of the above-referenced case and execution of judgment, is pre-empted by the Supremacy Clause of the United States Constitution that: **(1)** prohibits the making and enforcing of retroactive laws that denies any person's right to life, liberty or property; and **(2)** prohibits

conduct that denies another due process and equal protection under the law.

"(1)" Concerning "expost facto law"

The legal analysis and the construction of the "waiver" clause with the City's pension ordinance scheme - section 190.111 - was **retrospectively** applied to the pension transaction of **December 10, 1987:** [that] changed the approval of pension plan payments, by its Board of Pensions , on Plaintiff's behalf; **(**a**)** from a property interest from vesting, and a property right from [the] event of being discharged - as provided under section 190.16(3); to **(**b**)** [a] property interest still from vesting - however, as [to] a property right, as [a] waiver of state-created rights for [the] remedy by [the] State courts, [from] the claim of [a] wrongful terminated - [waiver] alleged [to be] mandated under Section 190.111.

The "waiver", as constructed and as applied to the **December 10, 1987** pension transaction, was then enforced, retroactive to the judgments by the Superior Court of **1988,** and the Appellate Court of **1989,** (herein Exhibit "A" and "B") which, collectively constituted perfected claim that had restored Plaintiff's property interest to employment - to vacate the claim. In this regard, the **May 10, 1991** order erroneously held, post facto: that the post-discharge application and approval of pension plan payments; suspended the previous action from Plaintiff's discharge; but for the limited purposes of [the] resolution of the question of his property right to employment; under the provisions of the pension plan; rather than in accordance with the general laws of the State; and, for the sole purpose to preempt State law by the pension ordinance [in order] to vacate the previous orders for Plaintiff's reinstatement to employment. Williams v. City of Los Angeles, 229 Cal.App.3d id. P. 1631) *(limited purposes application, section 190.111, and the appellate court's invalidation of section 190.16(3), even though shown as controlling authority and real basis for pension*)

"(2)" **Concerning denial of due process and equal protection of laws:**

(i) The law-of-the-case [and] judgment therefrom and its enforcement, that on **May 10, 1991, (herein Exhibit "C")** nullified the judgment and previous orders of the Court [that] restor[ed] Plaintiff to [his] employment, is pre-empted by the Supremacy Clause of the California Constitution: It prohibits any City from enforcing any local ordinance that interferes [with] or conflicts [with] or preempts general laws of the State.

(ii) The **May 10, 1991** judgment (herein Exhibit "C") used a provision of the City's pension plan ordinance - **Section 190.111** - as legal basis to set aside the previous orders restoring Plaintiff to employment, even though the previous orders: (herein Exhibits "A" and "B") had been rendered by State courts of competent jurisdiction; in accordance with the remedial and general laws of the State; and, concerning a field (public safety employment) of State-wide concern, full covered by the legislative scheme of the State.

(iii) The **May 10, 1991** judgment, and the surrounding circumstances, renders it pre-empted and invalidated by the State's statutory and common-law rule(s) of **"estoppel"**, in that:

(iv) in contravention of the rule(s): Defendant City, as Plaintiff's discharging employer, was enabled to defend the **discharge** strictly on its merit; then, having not prevailed on the defense, **avoid[ed]** Plaintiff's remedy for restoral to employment, based upon the inconsistent defense from the same operative facts, that he had **voluntarily retired !!!**

(v) in contravention of the rule(s): Defendants subjected Plaintiff to a discharge; to rely upon [a] provision in subject pension plan clearly intended for discharged employees to avail of pension - section 190.16(3); then, [to] avoid remedy to reinstate Plaintiff, as had been ordered by the Court after it deemed the discharge wrongful, by reliance upon his post discharge pension application and approval, and,

based upon [an] ordinance - section 190.111 - whose language no way near expresses such purpose.

39. The **May 10, 1991** judgment, and the surrounding circumstances are that Defendants employed, illicitly, a classification scheme of its pension ordinance scheme, in racial retaliation against Plaintiff for engaging in protective activity against them from an employment dispute.

40. This is shown from the absence of legitimate-purpose-use of the provisions and authority of the subject pension plan by the State Court of Appeals in its **May 10, 1991** decision, manifested: **(a)** from the fact that its enforcement was by the Chief of Police to **alter** the outcome of the discharge dispute from the court order that overturned the discharge; **rather** than the Board of Pensions to preserve the integrity of the plan; **(b)** where the City Charter vests exclusive jurisdiction to the Board of Pension Commissioners, rather then the Chief of Police to enforce the pension plan; **(c)** when the pension plan enforcement to vitiate the reinstatement remedy was based strictly from Plaintiff's exercise of pension benefits which, by statute, constituted and **unencumbered** property interest from **vesting,** rather than an **onerous property interest** whose right [to] requires **"waiver"** of other rights: particularly, as here, the fundamental, vested property right to due process and equal protection under State law, inclusive **with right to access to State court; and (d)** the legal reasoning of the State appellate court for enforcement of the pension plan was expressed as solely to reverse the outcome of its earlier decision that restored Plaintiff to his employment. Williams v. City of LA, 229 Cal.App.3d 1627 Id. 1631 (Exhbt. "C"]

41. That the State court of appeal's **May 10, 1991** construction and application of the subject pension ordinance scheme to defeat its previous orders that restored Plaintiff employment interests as erroneous, is shown from the fact that: AT NO PLACE WITH THE PROVISIONS OF THE LOS ANGELES POLICE AND FIRE PENSION SYSTEM

PLAN, IS THERE AN EXPRESSED OR IMPLIED CONDITION THAT, EXECUTION OF RIGHT TO BENEFITS UNDER THE PLAN, BY AND ON BEHALF OF AN EMPLOYEE PREVIOUSLY DISCHARGED FROM EMPLOYMENT, WAIVES STATE-HELD RIGHTS TO BRING SUIT AGAINST DEFENDANT CITY OF LOS ANGELES, BASED UPON CLAIM OF WRONGFUL DISCHARGE FROM EMPLOYMENT.

42. Conversely, Section 190.111 of the plan, upon which the State Court of Appeals relied, is shown as a "permissive" authority that enables the return to active duty, certain civil class members of the police department who had previously, but voluntarily relinquished property right to employment from a **"voluntary retirement".** As a permissive authority, section 190.111 contains **no** mandatory language, or any expressed or implied condition of waiver of any [other] rights as consequence of right to pension benefits: when the benefits conveyed were incidental to law of employment by previous "disciplinary" discharge. ["G" @ p.102]

43. Hence, the foregoing establishes that thedecision, order and enforcement by the California state court of appeal, as entered by judgment on **May 10, 1991,** that, based upon the construction of the City's pension ordinance scheme, vacated its **previous** order that [had] restored Plaintiff's employment as a property right: constitutes an invalid order by a state court, invalidated by the California Constitution and the general laws of the State; that, as enforced, deprived Plaintiff's right to continue in public employment; and, it was based upon the unconstitutional enforcement of the City's pension ordinance scheme, in contravention of the statutory and plain meaning language of the scheme, and, [it] was enforced as a classification scheme, absent legitimate governmental (City) purpose: and, it was applied **retrospectively** to **alter/defeat** previous[ly] settled claims - [the] right to pension, and, [the right to] previous judgment.

46. Pursuant to Federal Rules of Civil Procedure, Rule 8(d), as well as the [other] Federal and Local rule[s] of pleading, and as the[y] pertain to the conduct of the primary action in Civil Rights, there remains no triable issue of fact from the allegations of the instant, collateral complaint for declaratory judgment, or as to the relief prayed for, for the following reasons:

a. during the course of the proceedings pursuant to the primary action in Civil Rights, the facts material to relief of the instant petition, and law in support thereof, are deemed admitted, as consequence of Defendants' failure to deny Plaintiff's averments by pleading, in support of the claims, - Fed.R.Civ.Proc. 8(d) - as follows:

1) Plaintiff's **motion to lift stay** of the action in Civil Rights; filed and served on **August 28, 1991;** Clerk's record [@] **docket number 18,** averred as follows:

(i) The course of proceedings and judgment - Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) as; [a] product of Defendant City's abuse of [the] state-court-process; from [an] intentional, purposeful and fraudulent representation of legal and doctrinal interpretation of its pension ordinance scheme; to induce, and thereby did induce the state court not to enforce its previous order reinstating Plaintiff's property-right to continue in public employment. **Moreover,** [also] plead [was] that that conduct form[s] the basis for separate and distinct claim in civil rights, and against Defendant City's department of pensions.

2) Plaintiff's "court-ordered" **status report;** filed and served on **June 1, 1992;** Clerk's record [@] **docket number 35;** averred as follows:

(i) Same as [above] item **"(i)"** of the above-referenced motion, and; [also plead]

(ii) under circumstances that the judgment and its enforcement provided legal basis and right for collateral action in declaratory judgment; to declare legal relationships and rights of [the] parties, and to declare unconstitutional and nullify the judgment and enforcement [under] Williams v. City

of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) - one in the same subject to the instant, collateral action.

3) Plaintiff's **"Reply Memorandum"**; filed and served on **June 29, 1992;** Clerk's record, **docket number 49;** averred, as follows:

(i) Defendants' reliance on [the] judgment - Williams v City of Los Angeles, 229 Cal.App. id. as defense of Title VII claim as legally deficient for want of timeliness, subject matter, and relevancy; and,

(ii) That Plaintiff had retired from his employment, as determined by the referenced State appeal opinion, as pretextual as to a defense of the Title VII claim.

4) Plaintiff's **notice and motion to strike defendants' motion** (of **July 10, 1992) to dismiss the federal complaint** (under Civil Rights Act); noticed for **August 17, 1992;** Clerk's record, **docket number 57,** averred as follows:

(i) Defendants' motion to dismiss the instant complaint, [primary, Civil Rights] based upon [their] reliance upon - Williams v. City of Los Angeles, 229 Cal.App.3d id as an abuse of the Federal Court process, in that, Defendants' pleading was a purposeful, intentional, and fraudulent representation of the issues decided in the state appeal cases, and a purposeful, intentional, and fraudulent representation as how the issues decided in the state appeal cases pertained to the Title VII case.

47. Finally, the conduct described as attributed to Defendant City of Los Angeles, and as enforced by the State court, constitutes acts and actions by them, under color of law (pension ordinance) that deprived Plaintiff of rights, privileges and immunities secured to him, and, as heretofore described and alleged, by the United States Constitution and Federal laws; actionable under **42 U.S.C. 1983,** and for reasons that are race based.

WHEREFORE, and from the foregoing, PLAINTIFF PRAYS THE COURT:

1) Declare Plaintiff as with current right of property interest to employment as a Lieutenant of Police with Defendant City's police department; including all fringe benefits thereto; that such right was in accordance with the orders of the California Courts, a copy of [which] is hereto, annexed, referenced Exhibits "A" and "B"; and, as rendered by State court's of competent jurisdiction, in accordance with the laws of the State;

2) Further declare Plaintiff as an active, participating "System Member" with the Los Angeles Police and Fire Pension System, and this is consistent with the provisions of the plan, which, as the sole criteria for such membership, that the person be a duly sworn and appointed member of, here, the police department;

3) Declare **unconstitutional,** and further declare **null** and **void**, the decision, judgment, and enforcement of the California state court of appeal, a published opinion, as such, adversely effects similarly situated members of the Los Angeles Police and Fire Pension System, as well as similarly situated "public employee vested benefit plans", by placing an unconstitutional waiver conditions upon benefits that were previously earned from vesting.

4) In that regard, issue an immediate cease and desist order to the Attorney General of the State of California from further enforcement and application of the law-of-the-case - Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) - pursuant to 28 U.S.C. 1331, and on the ground that it is unconstitutional.

5) a mandatory, permanent injunction against Defendant City's department of pensions, its board of pension commissioners, and the Los Angeles Police and Fire Pension System from further interference with plaintiff's employment as a property right.

6) Pursuant to 28 U.S.C. 2201, a three-judge panel, exclusive of the Honorable(s) **James M. Ideman,** and **A. Wallace Tashima,** is requested to adjudicate and decide the instant petition.

7) Exclusion of the above-named jurists, and the reasons therefore, are more particularly described in the supporting declaration, attached too, and made a part of the instant complaint.

8) Any other relief that the Court deems proper.

The instant petition for declaratory judgment as collateral too and in addition to any further relief authorized in the primary complaint of the action in civil rights.

Dated: April 5, 1993 **Respectfully submitted**

Ronald Williams

3410 West Fifth Street, #215
Los Angeles, Calif. 90020

**********END OF DOCUMENT**********

APPENDIX S-1 - PLAINTIFF'S DECLARATION ATTACHED TOO AND IN SUPPORT OF COMPLAINT FOR DECLARATORY JUDGMENT

I, Ronald Williams declare:

1. I am Plaintiff pro se in the primary action in Civil Rights, as well as the instant petition.

2. I respectfully request that a three judge panel be convened to adjudicate the merits of the instant petition.

3. However, it is also requested that the panel be exclusive of the Honorables James M. Ideman and A. Wallace Tashima, the prior judges and present, respectively, trier of fact of the primary Civil Rights action.

4. In my opinion each has displayed bias and prejudice against me, and, in my opinion, will not be objective in resolving the issues of the instant action.

4. On **February 2, 1983,** the **Honorable James M. Ideman** recused himself for inappropriateness to continue, due to comments [I] made in one of my petitions to the Court.

6. On the same day, the **Honorable A. Wallace Tashima** became the adjudicator of the Civil Rights complaint. However, he immediately commenced with the same conduct that was the prior court; issuing orders to my petition[s], absent Defendants['] rebuttal, absent reason, whatsoever, thus, denial of [my]day in court as to the prayer for relief of the petition[s]

7. I certify under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of **April, 1993,** Los Angeles City and County, California

Ronald Williams
Declarant.

APPENDIX S-2 - (list of) EXHIBITS (filed) In Support of Complaint For Declaratory Judgment/Injunctive Relief

Dated and Filed: May 18, 1993 **Document**	**Ronald Williams Number**
Superior Court Writ of Mandate and Corresponding Order	**A**
California Court of Appeal Opinion B035287 (Aug. 10, 1989	**B**
California Court of Appeal Opinion 229 Cal.App.3d 162[7] (May 10, 1991)	**C**
Excerpts of Defendant-Appellee's Brief	**D**
Los Angeles City Charter, Article XIX, Section 202	**E**
Disciplinary Discharge Order	**F**
Los Angeles Police and Fire Pension Plan Article XVIII et seq.	**G**
Letter of Pension Payments Approval	**H**

APPENDIX T- LETTER TO PLAINTIFF RONALD WILLIAMS, FROM DEFENDANT LOS ANGELES POLICE DEPARTMENT, Dated January 14, 1998

LOS ANGELES POLICE DEPARTMENT

Bernard C. Parks
Chief of Police

P.O. Box 30158
Los Angeles California 90030
Telephone:
(213) 485-5241

Richard J. Riordan
Mayor

January 14, 1998

Mr. Ronald Williams
3905 Inglewood Blvd #307
Los Angeles, CA 90066

Dear Mr. Williams:

. . . **Your** personnel records have been reviewed in response to your recent request for a **retired officer's identification card**.

. . . **We** are pleased to inform you that your request has been granted. To obtain you new identification card, please present this letter to the Retirement Counselor at Personnel Division, Room 506, Parker Center, during normal business hours.

. . . **According** to your personnel file and the writ of mandate regarding your **termination,** the Department was not ordered to remove your **termination** and the associated materials. Unless you can provide additional documents that request the Los Angeles Police Department to remove these materials, *they will remain in your personnel file.*

. . . **If** you have any questions regarding this matter, please contact the retirement counselor Sergeant Don Keith at (213) 485-4054.

. . . Very truly yours,

. . . BERNARD C. PARKS

. . . Chief of Police

APPENDIX U - (Excerpts) ORDER AND MEMORANDUM, In re Judicial Misconduct, Filed August 28, 1997

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

In re Charge of	)	**Cathy A. Catterson, Clerk U.S. Court of Appeals**
Judicial Misconduct	)	No. 96-80370
	)	ORDER AND MEMORANDUM

Before: HUG, Chief Judge

[PAGE 1 A complaint of misconduct and four sets of supplemental materials have been filed against a district judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability. (Misconduct Rules) as approved in April 1993 and as revised in February 1997 pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. 372(c).

Complainant formerly worked for a city's police department. The judge was assigned to complainant's actions against the city seeking declaratory and injunctive relief, including reinstatement to the police department. Complainant asserts several claims against the judge related to his litigation against the city.

One of complainant's charges is that the judge should be disqualified from hearing his case. He claims the judge's spouse "may enjoy a relationship as the mayor's legal . . .advisor.

[PAGE 10 *(paragraph 2)** As part of his charge of bias, complainant also contends that the judge allowed the city's attorney to misrepresent a state appellate court decision. It appears, based on the findings in prior state and federal decisions regarding complainant's termination, that the city's attorney presented the chronology of complainant's

termination in a confusing, perhaps inaccurate, manner. However, complainant has not submitted any evidence that the attorney's mischaracterization was intended to mislead the judge, that the judge "allowed" the attorney ****PAGE 11 to mislead her regarding the appellate court decision, or that the judge has relied on the attorney's characterization. . . . . The judge's decision not to take corrective action against the attorney is not "conduct prejudicial to the effective and expeditious administration of the business of the courts," particularly because the attorney's characterization of the chronology of complainant's termination appears to have been unintentional and was not material to the judge's primary concern, which was whether complainant's action was barred by prior state and federal court decisions against complainant on the same issues.

Complainant also seeks a determination that four circuit judges (against whom no complaint has been filed) "be excluded from jurisdiction of the appeal" of his litigation against the city. Again, this complaint procedure may not be used to have a judge disqualified from sitting on a particular case. Misconduct Rule 1(f). A motion for disqualification is the proper procedure. Any charges against judges other than the judge named in the complaint are dismissed. . . . . .

[End of Excerpts (only) of Memorandum In re Judicial Misconduct]

APPENDIX V - (excerpts) MEMORANDUM SUPPORTING DISMISSING COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, Executed July 16, 1996

JAMES K. HAHN, City Attorney
FREDERICK N. MERKIN, Senior Assistant City Attorney
ROBERT CRAMER, Assistant City Attorney SBN 56805
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-5432
Attorneys for Defendant
CITY OF LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD WILLIAMS Plaintiff,
v.
CITY OF [LA] De[ft]

CASE NO. CV 93-2873-KMW
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS COMPLAINT PURSUANT TO FRCP RULE 12(b)(6)
DATE: August 26, 1996
TIME: 10:00 a.m.
PLACE: Roybal Building, etc.

[* PAGE 2 "II" STATEMENT OF FACTS (paragraph 3)]**

Plaintiff Williams is a former sworn police officer employee of the Los Angeles Police Department ("Department"), an operating department of defendant City. In 1987, the Department caused discipline charges to be instituted against Williams. The Department's administrative determinations of these charges eventually caused Williams to be ordered terminated from his employment.

Before this disciplinary penalty could be determined or enforced, however, Williams elected to apply for a service

retirement, which the City granted. *Williams v. City of Los Angeles, supra,* 229 Cal.App.3d at 1629-30, 281 Cal.Rptr. 21. Williams is receiving service retirement benefits from the City to this day. Id.

***** **PAGE 10** ***** For all of the abore reasons Defendant prays that its motion to dismiss the complaint pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6), be granted.

Dated: July 16, 1996

Respectfully submitted,
JAMES K. HAHN, City Attorney
FREDERICK N. MERKIN,
Senior Assistant City Attorney
ROBERT CRAMER,
Assistant City Attorney

By "s"
ROBERT CRAMER
Assistant City Attorney
Attorneys for Defendant
CITY OF LOS ANGELES

APPENDIX W - (excerpts) DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT; (excerpts) DECLARATION OF ROBERT CRAMER

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Attorneys for Defendant
CITY OF LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD WILLIAMS Plaintiff v. **CITY OF LOS ANGELES** Defendant.	**CASE NO.** CV 93-2873 KMW **DEFENDANT CITY OF LOS ANGELES' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT; DECLARATION OF ROBERT CRAMER** **DATE:** June 24, 1996 **TIME:** 10:00 a.m. **PLACE:** Courtroom 740, Roybal Building

I
INTRODUCTION

The subject matter of the present complaint has been extensively litigated in both the federal and California state courts. The original district court complaint, no. CV 90-1252 - JMI. . ., was filed March 14, 1990. In the mist of that litigation, on or about May 18, 1993, plaintiff RONALD

WILLIAMS ("Williams") elected to file the present complaint in this court, no. CV 93-2873-MRP, seeking declaratory and injunctive relief and invoking a district court panel of three judges to declare unconstitutional a decision by the Court of Appeal for the Second Appellate District of the State of California, *Williams v. City of Los Angeles,* 229 Cal.App.3d 1627, 281 Cal.Rptr. 21 (1991), *pet. for review denied,* 1991. Williams specifically requested that the three-judge panel not include either James M. Ideman or A. Wallace Tashima, the two district judges who had been at various times involved in decisions relevant to Williams' original federal complaint.

The City has no record of its City Clerk being served with process in no. CV 93-2873-MRP (SHx). As a result, the City did not file a pleading responsive to the complaint, and Williams, through the court clerk, took the City's default on August 2, 1993. . . . . .

****** PAGE 3 **** II**

STATEMENT OF FACTS

Plaintiff Williams is a former sworn police officer employee of the Los Angeles Police Department ("Department"), an operating department of defendant CITY OF LOS ANGELES ("City"). In 1987, the Department caused discipline charges to be instituted against Williams. The Department's administrative determinations of these charges eventually caused Williams to be ordered terminated from his City position.

Before this disciplinary penalty could be determined or enforced, however, Williams elected to apply for a service retirement, which the City granted. *Williams v. City of Los Angeles, supra* 229 Cal.App.3d at 1629-30, 281.Rptr.21. . . . . .

Dated: July 17, 1996 Respectfully submitted

JAMES K. HAHN, City Attorney
FREDERICK N. MERKIN,
Senior Assistant City Attorney
ROBERT CRAMER,
Assistant City Attorney

By "S
ROBERT CRAMER
Assistant City Attorney

APPENDIX X, DECLARATION OF ROBERT CRAMER SUPPORTING DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT (attached) DECLARATION OF ROBERT CRAMER [commencing @ PAGE 10 OF OPPOSING PAPER] - I, ROBERT CRAMER, declare as follows:

1. I am an attorney at law, licensed to practice in all of the courts of the State of California. I am employed as an Assistant City Attorney of Los Angeles. In the course of my work I was assigned to defend the City and the City employee defendants in *Ronald Williams v. City of Los Angeles, et al.*, No. CV 90-1252 JMI (GHKx) [later CV 90-1252 AWT (GHKx)], and CV 93-2873-MRP (SHx) [later CV 93-2873-AWT (SHx) and CV 93-2873-KMW (SHx)].

2. Plaintiff Ronald Williams ("Williams") is a former sworn police officer employee of the Los Angeles Police Department ("Department"), an operating department of defendant City of Los Angeles ("City"). In 1987, the Department caused discipline charges to be instituted against Williams. The Department's administrative determinations of these charges eventually caused Williams to be ordered terminated from his City position.

3. **Before** this disciplinary penalty could be determined or enforced, however, Williams elected to apply for a service retirement, which the City granted. *Williams v. City of Los Angeles, supra,* 229 Cal.App.3d **at 1629-30,** 281 Cal.Rptr. 21. Williams is receiving service retirement benefits from the City to this day.

5. On or about March 14, 1990, Williams filed a complaint, no. CV 90-1252-JMI (GHx), alleging three

separate causes of action: a claimed violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. ("Title VII"), and two claimed violations of the Civil Rights Act of 1871, 42 U.S.C. 1983 and 42 U.S.C. 1985.

5. In lieu of answering the complaint, the City on April 5, 1990 filed a motion to dismiss the 42 U.S.C. 1983 and 42 U.S.C. 1985 claims pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6). The City also suggested that federal abstention under the doctrine of *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), would be appropriate, since the state California District Court of Appeal was then reviewing many of the legal and factual questions raised in the federal litigation. . . . . .

[****** PAGE 13 ****** I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that his declaration was executed on June 17, 1996, at Los Angeles, California.

"5"

ROBERT CRAMER, Declarant

APPENDIX Y - (excerpts) DEFENDANTS' SUMMARY JUDGMENT MOTION AGAINST PLAINTIFF'S (primary) COMPLAINT UNDER CIVIL RIGHTS ACT(S)

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Attorneys for Defendants
CITY OF LOS ANGELES, DARYL F. GATES, ROBERT McNAMARA, and CONNIE CASTRUITA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD WILLIAMS Plaintiff,	**CASE NO.** CV 90-1252 AWT
v.	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS MOTION FOR SUMMARY JUDGMENT; DECLARATION OF CONNIE CASTRUITA,** etc.
CITY OF LOS ANGELES, et al., Def[ts]	**[Fed.R.Civ.P., Rule 56]**
	DATE: July 18, 1994
	TIME: 10:00
	PLACE: Courtroom 2

[****PAGE 2** (commencing with paragraph 2) The defendants assert that plaintiff Williams has failed to articulate a genuine issue of material fact as to either of his two remaining causes of action. Accordingly, the defendants bring the present motion for summary judgment, specifically contending that their conduct has been fully validated pursuant to *Williams v. City of Los Angeles, supra. . . (citing above*

"opinion on May 10, 1991, Williams v. City of Los Angeles, 229 Cal.App.3d 1627 . . . ")

[Under "STATEMENT OF FACTS", (commencing @ **PAGE 4) - An** internal Departmental Board of Rights convened on September 8, 1987, and took testimony and documentary evidence over several days. Castruita Declaration 10. On October 9, 1987 the Board of Rights found Williams guilty of the three charges and recommended that the Chief of Police order Williams' removal. Exhibits 528-529 hereto; ***** PAGE 5 *****Castruita Declaration 10. *Chief Gates, in his capacity as Chief of Police and appointing authority for the Police Department, adopted the recommendation of the Board of Rights, and on* ***October 19, 1987*** *ordered Williams' removal, effective* ***August 5, 1987*** *. . .* **Castruita Declaration 10**. On November 16, 1987, Williams filed a petition for a writ of mandate in the California state courts, seeking to overturn the recommendation of the Board of Rights and the decision of the Chief of Police. Los Angeles Superior Court No. C 667976; Castruita Declaration.

On November 5, 1987 - **after** the Chief of Police had ordered Williams' removal but **before** filing the state court petition to **challenge the removal** - Lieutenant Williams applied to the City's Board of Pension Commissioners for a service retirement, to be **effective August 1, 1987** . . ; **Castruita Declaration 12**. The Board of Pension Commissioners, at its regular meeting of December 10, 1987, **granted** Williams' request for a **service retirement**, and awarded him a pension in the amount of $1,872.88 per month, **effective August 1, 1987**, pursuant to the provisions of Article XVIII of the Los Angeles City Charter. *Williams v. City of Los Angeles, supra. . .* **Castruita Declaration 13.**

[*PAGE 7** (paragraph 2) ***** California's** Second District Court of Appeals unanimously ordered in a published opinion that the judgment of the Superior Court be reversed with directions. *Williams v. City of Los Angeles, supra.* The court of appeal held that ***following his disciplinary discharge,*** Williams had elected to take a service retirement, rather than

to withdraw his contribution to the defendant City's pension fund, and that under such circumstances, he was barred by Los Angeles City Charter 190.111(A)(1) from returning to active duty, even after he had successfully reduced his discipline to a suspension without pay. *Williams v. City of Los Angeles, supra,* 229 Cal.App.3d at 1635-36.

Pursuant to the opinion, the Superior Court for the County of Los Angeles on September 24, 1991 issued its return on remittitur, recalled its previously issued writ of [*** **PAGE 8** *** mandate, vacated its previously issued judgment, and denied Williams' previously granted petition for writ of mandate. Castrruita Declaration 21

(attached) DECLARATION OF CONNIE CASTRUITA

I, CONNIE CASTRUITA, declare that if called as a witness I could and would competently testify as follows:

1. I am currently employed as a Detective of Police in the Los Angeles Police Department ("Department"). I have been employed by the Department as a sworn police officer in various capacities for some 25 years. . . . . .

10. An internal Departmental Board of Rights convened on September 8, 1987, and took testimony and documentary evidence over several days. On October 9, 1987 the Board of Rights found Williams guilty of the three charges and recommended that the Chief of Police order Williams' removal . . . Chief Gates, in his capacity as Chief of Police and appointing authority for the Police Department, adopted the recommendation of the Board of Rights, and on **October 19, 1987** ordered Williams' removal, *effective* **August 5, 1987. . .**

11. On November 16, 1987, Williams filed a petition for a writ of mandate in the California state courts, seeking to overturn the recommendation of the Board of Rights and the decision of the Chief of Police. Los Angeles Superior Court No. C 667 976.

12. On November 5, 1987 - **after** the Chief of Police had ordered Williams' *removal* but **before** filing the state court petition to challenge that removal, Lieutenant

Williams applied to the City's Board of Pension Commissioners for a service retirement, to be *effective* **August 1, 1987. . . . . .**

13. The Board of Pension Commissioners, at its regular meeting of December 10, 1987, **granted** Williams' request for a service retirement, and awarded him a pension in the amount of $1,872.88 per month, *effective* **August 1, 1987,** pursuant to the provisions of Article XVIII of the Los Angeles City Charter. ***Williams v. City of Los Angeles*, 229 Cal.App.3d 1627, 281 Cal.Rptr. 21 (1991), *pet. for review denied*, 1991 . .**

>>>>>>>>>>>>>>>>>>.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct, and that this declaration was executed on June 20, 1994, at Los Angeles, California.

"S"

CONNIE CASTRUITA
Declarant

APPENDIX Z - TRANSCRIPT OF PROCEEDING ON DEFENDANT'S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Honorable Kim McLane Wardlaw, Judge Presiding

Ronald Williams
Plaintiff,
vs. No. CV 93-2873-KMW
City of Los Angeles
Defendant.

Reporter's Transcript of Proceedings
Los Angeles, California
Monday, December 16, 1996

Mark Schweitzer, CSR
Official Court Reporter
562 United States Courthouse
Roybal Federal Building
255 East Temple Street
Los Angeles, California 90012
(213) 626-7570

[Page 2 - Appearances of Counsel:
For the Plaintiff:
Ronald Williams, pro per
3905 Inglewood Blvd., #307
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(310) 397-4195
For the Defendant:
James K. Hahn, City Attorney
By Robert Cramer, Asst. City Atty.
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-5432

[Page 4 - Transcript]

Los Angeles, California; Monday, December 16, 1996

10:00 A.M.

THE CLERK: Matter number 1, CV 93-2873-KMW, Ronald Williams vs. City of Los Angeles.

Counsel, please state your appearances.

MR. CRAMER: Good morning, your Honor. Robert Cramer, Assistant City Attorney, for the defendants.

THE COURT: Good Morning.

MR. WILLIAMS: Good morning, your Honor, Ronald Williams representing himself.

THE COURT: Good morning.

All right. This is the City of Los Angeles motion to dismiss the complaint pursuant to 12(b)(6). I have reviewed all of the papers but will give the parties opportunity at this time to present oral argument.

Please go ahead, Mr. Cramer.

MR CRAMER: Your Honor, I believe the matter has been adequately stated in the papers. Unless the Court has any questions, which I'd be happy to answer, I have nothing further to add and would submit.

THE COURT: All right. Mr. Williams.

And Mr. Williams, I guess what I'd like you to particularly address is why isn't this fourth action that you filed barred by the State Court action in which the issue of the retirement was addressed by the California Court of ***Page 5*** Appeal and/or by the Federal Court of action in which Judge Tashima granted summary judgment for the City which was affirmed by the 9th Circuit.

MR. WILLIAMS: All right. Your Honor, this case is not as simple as you appear to think it is. The -- the issue in this particular hearing is a 12(b)(6) motion. The legal standard for 12(b)(6) motion I think is that he has -- the defendant has to establish that the complaint fails to state a claim upon which relief can be granted.

The complaint states allegations that the Court must accept as true. The complaint alleges that the State Court action, the appeal under Williams vs. City of Los Angeles, B035287, decided in August 10 of '89, constitutes the controlling state authority regarding the issue of my employment. That affirmed opinion was a writ of mandate commanding the City of Los Angeles to satisfy and terminate my termination from employment. The Court in that action found that the City of Los Angeles abused their discretion when they fired me and ordered that I be reinstated. The legal issue here -- the complaint alleges that the second judgment obtained by the City of Los Angeles under 229 Cal.App.3d 1627, decided in 1991, for specific reasons set forth in the complaint is a violation of my constitutional rights.

The complaint -- like I said, and I'll say it *** **Page 6** *** again -- well, let me just say another thing. Very interestingly -- very interestingly I happened to be reading the paper, and as the Court knows, I read a lot of papers. And I couldn't help to note that last Friday, Assistant City Attorney Hotchkiss in the Briseno vs. City of Los Angeles matter and City Attorney Hotchkiss is the same City Attorney that represented the City throughout the entire writ of mandate process.

Now, City Attorney Hotchkiss argued apparently successfully -- argued before the District Court and was arguing again, I guess before the 9th Circuit. He argued that, when the City of Los Angeles, through its board or rights, recommends a termination and the chief executes the order, that the termination at that time is binding on both the city and is binding on the -- the plaintiff. In this case it was Briseno.

When you apply those facts and the law to my case, I was subjected to a board of rights hearing. The chief of police executed the order. I was terminated October 19th, 1987, made retroactive to July 30th, of 1987. After I was terminated, I went to the pension department and applied for a pension. Now, the issue is whether or not, after I was terminated, I was with legal capacity to then retire from the job. I wasn't --

THE COURT: Mr. Williams, but isn't that what the ***Page 7 *** State Court looked at?

MR. WILLIAMS: Your Honor, this is a Federal Court. I respectfully submit that I am in a Federal Court prosecuting federal claims. And if I am in a Federal Court prosecuting federal claims, one of which is that the State Court denied me due process of law, it's my requirement, and the complaint does this, set forth what process is due. I set forth not only what process is due, but I backed it up with two State Supreme Court decisions that support what process was due in regards to the termination, in regards to my right to a pension, and in regards to my concurrent right after getting the pension to pursue any and all remedies available to me. And that's exactly what this complaint is all about.

Now, this Court in an order, I believe it was the last order in this case, when I filed a motion for default judgment, and counsel made the same statement, talking about similar claims. And similar and same is not synonymous when you're talking about primary rights to prosecute various claims whether it's in State or Federal Court. In the State Court, I had a primary right to continue in public employment, and when I was fired, I exercised and executed that primary right and was successful in getting the termination set aside.

Page 8 In the employment discrimination case, I have a primary right to be free from racial discrimination. Granted we cannot argue that case here. That was a cause of action that I lost on a summary judgment. But the -- the action I'm bringing now before this Court is independent -- it's an independent cause of action based on different claims, a violation of my constitutional rights that are, if true, entitled me to the relief that the complaint asks for.

So you can't lump them all together and say that the State Court said one thing, because if res judicata was to be really applied in this case, and one of the allegations on my complaint says I was denied the right to collateral estoppel as governed under State law, because if that had applied, Williams of 1989 would have been controlling authority

regard the State-held interest of my right to my employment. And the subsequent judgment in '91 has been shown, has been shown to be unconstitutional.

Then I'm going to say one other thing, and then I'm going to go because I know that this is not -- we all know what's going on here. I'm going to say this.

This attorney filed a motion to dismiss this complaint, and the grounds of his motion was -- the grounds of his motion was I failed to state a claim upon which relief could be granted on the ground that Williams vs. City of Los Angeles, 229 Cal.App.3d 1627, May of '91, declared or held that *** **Page 9*** I voluntarily retired from my job before the City had an opportunity to execute and enforce the termination order against me. That is a patent lie. My -- my opposing paper or this trial brief --

THE COURT: Which I read. I read it, Mr. Williams.

MR. WILLIAMS: All right. You read it, but I want it on here. I want -- this is called a full fair opportunity; right?

THE COURT: That's fine. But you know it is part of the record because it's in your brief that was filed with the Court.

MR. WILLIAMS: I know. But you know what? What did Bush say? Been there; done that. I tried relying on -- on evidence. Well, I don't want to ramble; so let me try to stay focused.

This attorney, like I said, filed a false pleading. 229 Cal.App. simply does not say -- the 1991 does not hold that. All that decision holds is that following my termination -- following my termination, I went to apply for a pension, and under those circumstances I'm barred from coming back. That does not -- does not prevent the remedy. It doesn't prevent the remedy whether it's a State Court action for wrongful termination or whether it is a Federal action for discrimination in employment.

Now, I would like to do -- I'm going to wind this *** **Page 10*** up because we all know. I would like to leave --

file. I would like to file or lodge with the Court -- and I have a copy for the defendant. And I have two copies for the Court. And this is a document called plaintiff's notice of lodging and lodging of document titled defendant's reply memorandum in support of motion to dismiss and alternative motion for summary judgment, declaration, exhibits under case number CV 94-6801.

Now, the relevance of this is -- this is the memorandum that Assistant City Attorney Hotchkiss filed in the Briseno matter, and it's a very interesting memorandum in that it establishes by his argument that once I was fired, that was a final decision, and the only way I could get my job back is to go to State Court under 1094.5, exactly what I've been arguing in this case.

And then going to the pension department after I'm fired does not alter in any way my employment which was already lost. I would like for purposes of appeal to -- to lodge this. Also I would like to say that, when you look at this memorandum and compare it with exhibit -- I believe it's exhibit 10 of my motion for default judgment filed on May 28, 1996. Exhibit 10 is the transcript of the lower court hearing that produced the '91 decision, the May 10, 1991, decision. And in that transcript you will see that Assistant City Attorney Hotchkiss made the same -- made a ***Page 11*** representation that because I had applied for a pension after I was fired, the issue of -- I retired from my job at that time, which is a blatant lie, proven by the memorandum that he filed in the Briseno matter.

Now, here -- here's the -- here's the -- I ought not to fet you one because you probably got one anyway.

THE COURT: Miss Guillory, would you please get a copy of that? We'll file it with the Court.

MR. WILLIAMS: Now, I would like to have a few seconds to make sure I've covered everything. And if we don't have time for that, I would appreciate it that we continue this because I don't want to be rushed.

THE COURT: No, you go ahead. You take your time. Why don't you sit down. I have a couple of questions for Mr. Cramer. So why don't you make sure you've covered it --

MR. WILLIAMS: All right. Well, let me finish now.

THE COURT: All right. You want to finish. All right. Go ahead.

MR. WILLIAMS: I'll tell you what. This is -- there's an alternative here. I reduced my oral argument to writing. And the reason did I did that is because being a nonlawyer and nervous, I thought I might forget something. The oral argument consists of 14 pages. I can paraphrase it and file the complete argument with the Court and just go ***Page 11*** ahead and present it.

THE COURT: Instead of reading it, why don't you just file it with the Court. Haven't you -- you've been talking now, Mr. Williams, for about 10 minutes. So --

MR. WILLIAMS: You know what? I've been prosecuting this case since 1990.

THE COURT: Mr. Williams, you do not interrupt the Court.

MR. WILLIAMS: Okay.

THE COURT: You've been talking now for 10 minutes. So I assume you've covered some of what's in your oral argument. So why don't you cover the remaining points that you want to cover by paraphrasing it, and you can file the entire oral argument with the Court.

MR. WILLIAMS: All right. Again, there are three primary rights involved in this case. In State Court it was a primary right to continue in public employment, which I prevail on, and cite it in Williams vs. City of Los Angeles, B035287, August 10 of '89.

The second primary right was my right to be free from loss of employment motivated by racial discrimination, which, granted, I lost.

My third primary right, which I'm prosecuting today, is the right to the protection of my employment property rights and interest from -- from being taken from me ***Page 13

*** under circumstances violating the Constitution and Federal law and the complaint specifically at allegation 2 sets forth precisely the Constitutional claims of the -- of that action.

It's not res judicata. He -- Any res judicata claim is inapplicable anyway because he never raised it. And that's in the papers.

Now, I've already -- let me -- let me quote Zaldivar, Z-a-l-d-I-v-a-r, vs. City of Los Angeles, 780 F.2d, 823, 9th Circuit, 1986, in support that Mr. Cramer's filing of this motion with a false authority, falsely representing the '91 opinion as saying I was never fired. It constitutes harassment with the meaning of Rule 11.

Exhibit A of my opposing paper to Cramer's motion are the precise pages that he cited in his motion as representing that the State Court of Appeals said that I wasn't fired, that I voluntarily retired. I put those pages in there son the Court can read what the State Court of Appeals said, which was not that. And if you want, I'll read it now.

You want me to read it? Let me read it.

THE COURT: Ms. Guillory, may I have a copy of the paper that he handed to you?

What are you reading from?

MR. WILLIAMS: Okay. I'm reading from plaintiff's ***Page 14*** Ronald Williams memorandum of points and authorities in opposition to defendant City of Los Angeles motion to dismiss the complaint for declaratory judgment which I filed or presented to the Court on August 23rd of '96. If you look at Exhibit A, Exhibit A is page 1629 of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627. I quote, "respondent

> was dismissed from his position for misconduct He filed a previous petition for writ of mandate to be reinstated to his position primarily on the ground that the findings of misconduct did not support the penalty of dismissal. That litigation which lasted approximately two years, was ulti-

> mately resolved in respondent's favor." That's me Ron Williams, the plaintiff here. "Pursuant to the previous writ of mandate, the Police Board of Rights reconsidered the penalty and recommended a 30 day suspension.".

Now, Cramer represents that precise page, and that is the total authority that he used to dismiss this complaint -- I got to read it. Where is it? I quote this his -- his -- defendant City of Los Angeles motion to dismiss the complaint pursuant to FRCP 12(b)(6). Precisely, he says: "Plaintiff is a former

> Sworn police officer -- police employee of Los Angeles Police ***Page 15 *** Department and operating department of defendant city. In 1987 the department caused discipline charges to be instituted against Williams The department's administrative determination of these charges eventually caused Williams to be ordered terminated from his city position.
>
> Before this disciplinary penalty could be determined and enforced, however, Williams elected to apply for a service retirement which the City granted." He cites Williams vs City of Los Angeles, Supra 229 Cal.App.3d at 1629 through 1630.

That -- those pages are the precise -- is the page that I just read to you of what the Court of Appeals really said. Now, that's -- not it's harassment for me to have to come here and defend this action when he deliberately lies. You know why he lies? Because the Court gives him all the leeway to lie and do anything he wants.

THE COURT: Mr. Williams, I'm not going to permit personal attacks on counsel.

MR. WILLIAMS: Wait. Wait. Let me say this.

THE COURT: I am not going to permit that. Go on to your next argument. You have four minutes left.

MR. WILLIAMS: Okay. Okay. Personal attacks. I think it's a personal attack on me for him to lie.

Page 16 THE COURT: Mr. Williams.

MR. WILLIAMS: Okay. The present cause of action constitutes a distinct and separate cause of action; therefore, res judicata does not apply. Now, part of -- part of -- in part -- in support of my complaint, in part, I rely on Mitchum vs. Foster, 407 U.S. 225 and 242. This case was decided one year after the case known as the Younger Abstention Doctrine.

In the Mitchum case, the Supreme Court recognized the need for Federal injunctive relief even against State Court proceedings if relief would prevent great immediate and irreparable loss of a person's Constitutional rights. Mitchum -- the United States Supreme Court in Mitchum opinioned that both State officers as well as State Courts might be antipathetic to the vindication of federally protected rights.

So that's -- that response and the reason I put that in there is because for some reason Mr. Cramer thinks because of who he is, because of who the agents of the City are and because of the City of Los Angeles and State Courts are immune from having to comply with Constitutional rights. That's why I came to Federal Court, to vindicate the deprivation of my Constitutional rights by defendant City of Los Angeles through the State Court.

Now -- and the complaint alleges that they ***Page*** 17 misrepresented. It's a fraudulent litigation that resulted in the May 1991 decision, and what did they call it? With specificity and exactness, I established that.

Now, okay, I'm going to finish now, right here. Federal Rule of Civil Procedure 8(b) gives me the expectation and the right to be presented with issuable defenses to the issues I raise in support of the claims I have made. I should not have to be confronted with conclusionary, evasive and repetitive defenses.

Now, I'm not even going to deal with the three judge panel because I don't even think you're thinking abut that, the fact that my complaint stated -- requested a three judge panel. When I made that request, it was because I did it based on cases that were decided before that particular statute was

repealed. But I did it in good faith. It wasn't any prejudice to him, because all we had to do was just drop two of the judges.

Okay. Let's see.

THE COURT: You about wrapping it up?

MR. WILLIAMS: Okay. Let me just say. This is real important. If Mr. Cramer, the City of Los Angeles were to prevail on the issue of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627, May 1991, that constitutes a statutory affirmative defense. And I quote, I cite, Funding Systems Leasing Corporation vs. Pugh, P-u-g-h, 530 F.2d 91, page 93 ***Page 18*** and page 95 through 96, 5th Circuit, 1976. And I'll just make this real brief.

In that case, it was a Georgia case, and the Georgia court -- the 5th Circuit was trying to decide whether a particular Georgia law, 105-303, whether it was -- constituted a statutory -- statutory affirmative defense. That law said -- it requires that before anybody can maintain a suit based on deceit, he got to prove that even in the exercise of due diligence, he or she could not have obtained the truth. That's what that -- it was a preamble to a case for deceit.

Now, what the Georgia -- what the 5th Circuit did to determine whether or not that was a statutory offense, it looked at the statute in the context of statutes, Georgia statutes, and determined that because it was very much like the statute of frauds, but only it defended against frivolous actions on deceit, it constituted a statutory defense.

And the reason I say that, because in the present case, Williams vs. City of Los Angeles, May 10, 1991, in effect is a statutory affirmative defense. The City is declaring that pension section 190.111 precludes the maintenance of this action, as they plead it, to preclude the maintenance of my discrimination action. He is required to affirmatively plead 190.111 within the context of State law of California.

***Page 19 *** In other words he can't just walk in here and say "229 Cal.App. affirmative defense." He has to say, "229 Cal.App. affirmative defense, in my case they were

enforcing 190.111. Court, let me tell you why 190.111 precludes the maintenance of these federal actions."

Now, that's called a fair notice of defense. I've never had a fair notice of defense because he's never even mentioned the section that the State Court of Appeal was enforcing.

Now, I'm comfortable, I think, and I covered everything for appeal. Because I -- we -- we all know that's where we -- oh, let me -- let me just say, I -- well, anyway, I'm going to file this written statement.

THE COURT: Please do.

MR. WILLIAMS: That has all the citations.

THE COURT: Mr. Williams, I am not unsympathetic to the plight you found yourself in in State Court, but we do have to analyze this in the context of the State Court of Appeals findings.

MR. WILLIAMS: You know what?

THE COURT: Now, you may sit down. And Mr. Cramer, I have a question for you.

MR. WILLIAMS: I wish you wouldn't be patronizing to me, though. Because --

THE COURT: Mr. Williams, you are getting out ***Page 20*** of line. There is no suggestion I'm being patronizing to you.

All right. Mr. Cramer, I have a question for you. You've brought this motion under 12(b)(6), and my -- you also asked that the Court consider the prior State Court action and the prior Federal Court action in your arguments based on the full faith and credit act and the application of the principles of res judicata.

Does that transform this motion into a Rule 56 summary judgment motion, because you're asking the Court to consider matters outside the pleadings, and are you asking that the Court take judicial notice of those other actions and consider this as a Rule 56 motion?

MR. CRAMER: I must admit I did not originally view our 12(b)(6) motion as calling for the action the Court suggests. It was our view that the -- that this case could be

resolved by res judicata and that that was properly a subject of 12(b)(6).

If the Court disagrees, then so be it, and we would ask that he 12(b)(6) motion be interpreted as a -- as a Rule 56 motion.

THE COURT: Well, I have to say I have to look into that.

MR. CRAMER: I believe it can be adequately handled as a 12(b)(6). At least that was our intention to begin ***Page 21*** with.

THE COURT: But you're asking for it in the alternative, if the Rule 56 is appropriate?

MR. CRAMER: I believe it can be properly handled as a Rule 56 motion as well, but that was not our original intent.

THE COURT: Okay. Well, is the City requesting that I take judicial notice of these other cases?

MR. CRAMER: Your Honor, I believe they are properly cited, and I don't believe judicial notice is necessary. If the Court disagrees, again, the City would so request that -- that these cases be so addressed.

THE COURT: All right. Well, I will take this matter into submission, consider -- have you filed a copy of your oral argument?

MR. WILLIAMS: I'd like to raise one objection. If he -- if this case is --

THE COURT: Mr. Williams, if I allow you to raise your final objection, you must go to the podium and address the Court properly.

MR. WILLIAMS: My objection is if this Court is going to consider evidence outside of the pleading regarding his 12(b)(6) motion, then under Rule -- I think it's 54(c), I am entitled to 10 days to -- and sufficient notice to determine what, if anything, is going to be considered ***Page 22*** outside so I can adequately respond.

THE COURT: All right. Your objection is noted, and I will take this matter under advisement.

Thank you very much.

(Proceedings concluded at 10:30 A.M>)

CERTIFICATE

I hereby certify that pursuant to Section 733, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings in the above matter.

_____

MARK SCHWEITZER, CSR DATE: December 16, 1996
Official Court Reporter
License No. 10514

APPENDIX AA - (excerpts) COMPLAINT FOR DAMAGES UNDER THE CIVIL RIGHT ACTS, Filed March 14, 1990

LAURENCE B. LABOVITZ
Attorney at Law
3055 Wilshire Boulevard, Suite 900
Los Angeles, California 90010
(213) 487-1520

Attorney for Plaintiff RONALD WILLIAMS

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Lt. RONALD WILLIAMS,	**CV NO. 90-1252 JMI**
Plaintiff	**Complaint for Damages For**
-v-	**1. Employment Discrmn. [42 U.S.C. 2000e]**
CITY OF LOS ANGELES CHIEF OF POLICE DARYL GATES, individually, ROBERT McNAMARA, Individually, CONNIE CASTRUITA, individually.	**2. Deprivation of Rights [42 U.S.C. 1983]**
	3. Conspiracy [42 U.S.C. 1985]
	4. Demand for Jury Trial [F.R.Civ.P., Rule 38]
Defendants	

PLAINTIFF ALLEGES:

GENERAL ALLEGATIONS

1. This is an action in law and equity authorized and instituted pursuant to the Civil Rights Act of 1866, 1870, and 1964 and 42 U.S.C., Sections 1983, 1985 and 2000e

Jurisdiction of this Court is invoked pursuant to 42 U.S.C. Sections 1983, 1985 and 2000e and 28 U.S.C., Section 1943 (3) and (4). The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights involving racial discrimination in employment.

The rights, privileges and immunities sought to be secured in this action are rights, privileges and immunities guaranteed by the due process and equal protection clauses of

the Fourteenth Amendment to the Constitution of the United States and by 42 U.S.C., Section 1983, 1985 and 2000e ****

5. Defendant Daryl F. Gates is an employee of the City of Los Angeles Police Department and is the Police Chief of the Los Angeles Police Department, and at all times mentioned herein was the "appointing authority" and administrator of the Los Angeles Police Department, and the final policy and decision-making authority for all departmental personnel, policy, practices and procedures.

In doing the acts hereinafter described acted with the course and scope of his employment and acted under the color of his authority as such, and under color of the statutes, regulations, customs, and usages of the State of California, the City of Los Angeles, and the Los Angeles Police Department, and was acting within the purpose, course and scope of said agency, service and employment.

6. Sargeant Robert McNamara and **Detective Connie Castruita** are employees of the City of Los Angeles and the LAPD, and assigned to the Internal Affairs Division.

In doing the acts hereinafter described and acted within the course and scope of their employment and acted under the color of their authority as such, and under color of the statutes, regulations, customs, and usages of the State of California, the City of Los Angeles, and the Los Angeles Police Department, and were acting within the purpose, course and scope of said agency, service and employment.**********

10. Plaintiff has exhausted all of his administrative remedies and prevailed on all issues raised in the California Superior Court, Case No. C 667 976, and the California Court of Appeals (2nd Civil No. B035287)

11. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission on April 13, 1988, attached hereto as Exhibit A, and was issued a Right to Sue Letter by the Department of Justice on December 15, 1989, attached hereto as Exhibit B.**********

AS A FIRST, SEPARATE AND DISTINCT CAUSE OF ACTION FOR RACIAL DISCRIMINATION IN HIS EMPLOYMENT
[42 U.S.C. 2000e]

15. Specifically, Defendant Daryl F. Gates has from January 13, 1987, intentionally and purposefully discriminated against Plaintiff by denying Plaintiff his constitutional right to continued public employment and other benefits with the Los Angeles Police Department and by:

c. intentionally imposing and instituting arbitrary and abusive disciplinary proceedings against Plaintiff so as to attempt to force him into premature retirement and destroy his professional career because of his race and color;

h. continuing to retaliate against Plaintiff's reinstatement efforts by imposing a 30-day suspension upon Plaintiff for "failing to accurately respond" to Departmental charges, while giving only two day suspensions to non-Black Officers for similar offenses, concocting false stories of Plaintiff's "retirement" from his "rightful place of employment", and filing frivolous appeals so as to destroy Plaintiff's professional career because of his race and color.

FOR A SECOND, SEPARATE, AND DISTINCT CAUSE OF ACTION FOR DEPRIVATION OF RIGHTS UNDER COLOR OF STATE LAW
[42 U.S.C., SECTION 1983]

18. Plaintiff hereby incorporates Paragraphs 1 thru 11 of the General Allegations of Paragraphs 12 through 17 of the First Cause of Action as though set forth at length hereat.

19. At all times mentioned herein, Defendants were employees of the City of Los Angeles and Defendant Chief of Police Daryl F. Gates, and his subordinates within the top management of the LAPD, and in conjunction with the City Attorneys Office, in doing the things herein mentioned, acted under the color of their authority as such and under the color of the statutes, regulations customs and usages of the State

California and the City of Los Angeles, and the policies and procedures of the Los Angeles Police Department.*********

21. Further, on **December 11, 1989,** after Plaintiff's Third Hearing before the discredited "Board of Rights" at Parker Center, Plaintiff presented himself for reinstatement to the Department for immediate reassignment. Plaintiff [was] had an absolute constitutional right to return to his job as a Lieutenant of Police.

At that time, Defendant City of Los Angeles and Daryl F. Gates, after consultation with the City Attorney, refused to reinstatement Plaintiff and announced that Plaintiff was deemed to have "retired" 2 1/2 years earlier, and was ineligible to return to his rightful place of employment as a Lieutenant of Police with the LAPD.

22. Defendant City of Los Angeles and Daryl F. Gates have refused to reinstate Plaintiff despite three Superior Court Writs of Mandate, and the California Court of Appeals affirmance of such Judgments and Writs.

23. By reason of the conduct of Defendants, and the policies and procedures and customs and usages of the LAPD, Plaintiff was deprived of his rights, privileges and immunities secured to him under the Constitution of the United States, 14th Amendment and laws enacted thereunder in that such actions were intentionally wrongful an deprived Plaintiff of his life, liberty and property without due process of law.

24. Defendants, and each of them, demonstrated a reckless and callous indifference to Plaintiff's legal and constitutional rights, and retaliated against Plaintiff for successfully pursuing reinstatement and prevailing on all points at all states of the lower Court and Appellate proceedings.

30. Defendants, and each of them, did the things herein maliciously, and that their conduct was motivated by an evil intent and racial hatred, and that each of them demonstrated a reckless and callous indifference to Plaintiff's legal and constitutional rights.

31. Defendants Gates, McNamara and Castruita, and each of them, did the things herein maliciously, and with the intent and purpose to oppress Plaintiff for which Plaintiff is entitled to punitive damages.**********

March 14, 1990 at Los Angeles, California.

ORIGINAL SIGNED

LAURENCE B. LABOVITZ, Attorney for Plaintiff Lt. Ronald Williams

VERIFICATION

I, LT. RONALD WILLIAMS, am the Plaintiff in the above-entitled proceeding. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Dated: March 14, 1990 at Los Angeles, California

ORIGINAL SIGNED

LT. RONALD WILLIAMS

*******End of Document*******

APPENDIX BB - MOTION (to the 9th Circuit) FOR DISQUALIFICATION of the CIRCUIT JUDGES NAMED

Ronald Williams, Plaintiff-Appellant	No. 97-55070
vs.	D.C. No. CV-93-2873 KMW (C.D. Cal., Los Angeles)
City of Los Angeles, Defendant-Appellee.	Plaintiff/appellant's Motion For Disqualification of the Circuit Judges Herein Named From Presiding Over The Instant ... Appeal. [28 U.S.C. 455 . .]

Plaintiff/appellant Ronald Williams, in good faith, hereby moves this Court to prospectively disqualify Circuit Judges Tashima, Beezer, Brunetti, and Noonan from sitting as Judges over the instant appeal. This motion is respectfully presented to this Court under 28 U.S.C. 455 et seq., on the ground that under all circumstances and issues of the instant appeal, the above named Judges' impartiality might reasonably be questioned.

The instant appeal is from the Order and Judgment entered by the district court (Judge Wardlaw) on **December 30, 1996,** that granted Defendant/appellee's motion to dismiss the subject Complaint for Declaratory Judgment under Federal Rules of Civil Procedure, Rule 12(b)(6): dismissed on the ground that the district court construed the California State Court of Appeals under Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), as having held Petitioner/ Appellant to have **"voluntarily retired from his position of employment". ("the force")**

Judge Wardlaw, the district judge rendering the dismissal decision, had assumed jurisdiction of the case from Judge Tashima on **January 17, 1996,** after the latter was elevated to the 9th Circuit Court of Appeals. **[c.r. #14, CV-93-2873]**

However, three months before Judge Wardlaw's dismissal order on this action for declaratory relief, on **September 30, 1996,** Plaintiff/appellant filed a Complaint of Judicial Misconduct against her, pursuant to 28 U.S.C. 372(C). **[96-80370 (pending)]**

In material part, the **Complaint of Judicial Misconduct** alleges that Judge Wardlaw's entire conduct of the instant case for declaratory judgment is prohibited under 28 U.S.C. 455a and was purposed to illicitly eradicate it in the same manner the above named Circuit Judges illicitly eradicated the prior action for employment discrimination. [Williams v. City of LA et al. CV-90-1252 (3/14/90) and CA 94-56250 (decided 3/25/96)]

Namely:

1. by issuing **memorandums, orders** and **judgments** on Defendant/appellee City of Los Angeles' behalf, that fraudulently misrepresented Williams vs. City of Los Angeles, 229 Cal.3d 1627 **(May 10, 1991)** as legal evidence that Plaintiff/appellant's "voluntarily retired" from his employment with the City, **while;**

2. fraudulently concealing by omitting from the same **memorandum, orders** and **judgments,** Williams vs. City of Los Angeles, Cal.App.2d B035287 **(Aug. 10, 1989),** the legal evidence of his wrongful termination from employment by the City.

Legal Standard

Upon a party's motion, a judge must disqualify himself or herself where he or she has a personal bias stemming from an extrajudicial source. 28 U.S.C. 455, see also Toth vs. Trans World Airlines, Inc., 862 F.2d 1381 (9th Cir. 1988). The legal standard for recusal is whether a reasonable person with knowledge of all of the facts would conclude the judge's impartiality might reasonably be questions. United States vs. Studely, 783 F.2d 934, 939 (9th Cir. 1986)

Court records of district court and court of appeal can be judicially noticed. F.R.E. 201(b) (citing U.S. v. Verlinsky, 459 F.2d 1085 (5th Cir. 1972).

In the event the instant appeal is decided in Plaintiff/appellant's favor and is thereafter prosecuted fully and fairly below, the manner Circuit Judges Tashima, Beezer, Brunetti and Noonan conducted Plaintiff's prior employment discrimination case, under CV-90-1252, will be uniquely subjected to lower district court scrutiny.

It is alleged by the Complaint for declaratory judgment and supported by exhibits that are attached too and made a part of the Complaint, that after Plaintiff/appellant had been subjected to a termination from his position of employment by Defendant/appellee City, and after fully prosecuting successfully a State court challenge of the termination by Williams v. City of Los Angeles, Cal.App.2nd Civ. B035287 (Aug. 10, 1989); herein Defendant/appellee, by way of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), invalidly and unconstitutionally secured a decision that retroactively rescinded the judgment that had set the termination aside even after it had been fully affirmed by the same State appeal court. The Complaint with specificity under the pension plan, particularly describes the fraudulent misrepresentation of suspect charter section 190.111(A)(1) as well as the pension plan taken as a whole. **Moreover,** even though the May 10, 1991 State appeal decision authorized the nullification of the set aside decision of August 10, 1989, in dicta, through judicial notice, the 1991 State appeal panel still acknowledged the case it decided on August 10, 1989 [see Williams vs. City of Los Angeles, 229 Cal.App.3d 1627, 1628-33 and n.33]

Nevertheless, in the face of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) whose dicta only acknowledges the wrongful termination, and whose law-of-the-case resolved **only** the pension transaction initiated by plaintiff **after** the termination: **Judges Tashima, Brunetti, Beezer** and **Noonan** feigned the May 10, 1991 State appeal decision has finding plaintiff voluntarily retired from his employment, to manufacture legal justification and excuse to dismiss plaintiff's prior action for employment discrimination.

[See Williams vs. City of LA, CV90-1252 AWT (D.C.'s Conclusion of Law, p.7-10 supporting Deft's mot. for sum judgmnt); and Memorandum of 9th Cir. Affrm'ing 90-1252, p.1-3, CA 94-56250, entered 3/25/96]

Conclusion

The foregoing facts from the record of the action for declaratory judgment is highly probative, extrinsic evidence, that the above named Circuit Judges have a personal bias and prejudice favoring Defendant/appellee regarding the outcome of the instant appeal. Because in the event the Complaint for declaratory judgment is reversed on appeal, its' successful prosecution will expose to public scrutiny by trial, evidence that the Circuit Judges' feigned the May 10, 1991 State appeals decision as evidence that Plaintiff/appellant voluntarily retired from his employment, as they concealed by omission, the August 10, 1989 State appeals decision of his wrongful termination.

From the foregoing, plaintiff/appellant prays that **Judges Tashima, Brunetti, Noonan** and **Beezer** be prospectively excluded from presiding over the instant appeal: notwithstanding their standing as sitting judges of the United States District Court of Appeals for the Ninth Circuit.

Dated: January 23, 1997 Respectfully submitted

"s"

Ronald Williams, pro se

Plaintiff/Appellant's Declaration
In Support, in re: Disqualification of Circuit Judges
Tashima, Beezer, Brunetti and Noonan

I, RONALD WILLIAMS declare:

1. I am plaintiff/appellant in pro se of the above titled action, a preliminary injunction appeal.

2. At all times relevant, I have and continue to represent myself while prosecuting the action below and pursuant to the instant appeal.

3. On May 18, 1993, I filed the subject Complaint for declaratory relief, while I was prosecuting another federal action pro se, which was under federal statutes for discrimination in employment.

4. I filed the action for declaratory judgment, on my good faith belief that, under 28 U.S.C. 2201 and 2202, and pursuant to Federal Rules of Civil Procedure, Rule 57, I could file the action as a Complaint for relief, in the alternative to any relief I may be entitled under the Civil Rights Act.

5. I filed and I prosecuted the action for declaratory judgment during the year 1993, to the extent provided for by the applicable rules of civil procedure:

a. by filing and service under both Rule 5(b), then under Rule 4 of the federal rules of civil procedure;

b. by a subsequent application to the Clerk of Court for a Clerk's entry of default, which was granted; and,

c. by two filed and served procedural motions - one regarding the transfer or the action from one district court to another, the other regarding default and judgment by default on the Complaint for Declaratory Judgment.

6. When Judge A. Wallace Tashima denied my unopposed motion to instruct the clerk to enter the default and the judgment by default, filed in 1993, based upon my claim that the amount by computation could be made certain, I returned to prosecuting my primary action for employment discrimination. Because the Defendant City refused to answer or otherwise defend the complaint for declaratory judgment, and had further failed to petition for relief from the Clerk's default; there was not much more that I could do, since Judge Tashima had also denied the motion for judgment by default.

7. On or about **July 27, 1994,** I was in receipt of Judgment, and Memorandum of Facts and Law, that granted Defendant/appellee motion for summary judgment on my other Complaint for discrimination. The primary legal reason

for granting the motion, however, I knew to be false. Namely, that the California Court of Appeals under Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) had determined that I had voluntarily retired from my position of employment as a police lieutenant with Defendant/appellee's police department. **Furthermore,** I noted that neither the Judgment nor the fact and law memorandum cited Williams vs. City of Los Angeles, Cal.App.2d B035287 (Aug. 10, 1989) which is the California appeals court affirming decision of my wrongful termination and judgment restoring my employment.

8. On or about **March 25, 1996,** I received the Memorandum/Opinion of the 9th Circuit Court of Appeals, that affirmed the district court's grant of the summary judgment motion. It too affirmed that Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) held me to have "voluntarily retired from the Los Angeles Police Department". I also noted like the district court had done, the 9th Circuit opinion omitted reference of citation of the August 10, 1989 State appeals decision of my wrongful termination.

9. In my opinion and as I have pled without opposition by nine filed and served papers in the case, the findings of Judge Tashima and the other named circuit judges that the May 10, 1991 State appeals decision held that I voluntarily retired from my position of employment is patently false. In my opinion, purposed to cover-up Defendant/appellee City of Los Angeles' terminating me from my employment, and the legal evidence of the termination.

10. When I filed the subject action for declaratory judgment, on **May 18, 1993,** one of the reasons was to stop the City from misrepresenting the 1991 State appeals decision as its complete defense to my discrimination action. Those allegations are throughout the Complaint, particularly at allegations 7 through 8. I have since pled that a just and speedy, 1993 resolution of the action for declaratory judgment would have prevented the Defendant from prevailing in the action for discrimination under the May 10, 1991 State appeals decision.

11. The instant motion is made in good faith - to circumvent Judges **Tashima, Beezer, Brunetti** and **Noonan** from presiding over the instant, preliminary injunction appeal. Because, ironically, one of the necessarily included remedies the instant appeal seeks, is to be relieved from the judgments and orders of those judges, who feigned Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) to be legal evidence that I voluntarily retired from my position of employment; while they concealed Williams vs. City of Los Angeles, Cal.App.2d B035287 (Aug. 10, 1989), the legal evidence of my wrongful termination.

12. For the above specified reasons and those set out by the attached motion, I would be severely prejudiced if any of the above named circuit judges were to be assigned to resolve the matter of the instant appeal. Therefore, I respectfully pray that each of them be excluded from presiding over the instant appeal.

13. I have filed petition for Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit, with the United States Supreme Court, from the summary judgment motion against my complaint for employment discrimination. As far as I'm aware, the petition is pending before the high Court.

I certify under the penalty of perjury, all of the foregoing is true and correct.

Jan. 23, 1997 "S"

Declarant

******* End of Document *******

APPENDIX CC- PLAINTIFF/APPELLANT'S ORAL ARGUMENT REQUEST

Ronald Williams
3905 Inglewood Blvd., #307
Los Angeles, CA 90066
Plaintiff/Appellant in pro se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD WILLIAMS	**No. 97-55070**
Plaintiff/Appellant	**DC No. CV-93-2873 KMW**
vs.	**Plaintiff/appellant's Request**
CITY OF LOS ANGELES	**That The Court Entertain**
Defendant/Appellee	**Oral Arguments In The Instant Case On Appeal; alternatively, That The Court Take Judicial Notice of Judicial Misconduct #96-80370.**

TO THE CLERK OF THE COURT AND TO DEFENDANT CITY OF LOS ANGELES, and its' Attorney-of-record, Mr. Robert Cramer:

By notice dated June 5, 1997, the parties were instructed by the Clerk of the court, to present statements why oral argument should be heard in the case, within ten days of the notice. For reasons set forth below, plaintiff respectfully request that the Court grant argument in the case. In the alternative, however, plaintiff request that the Court take judicial notice of the entire file setting forth the Complaint for Judicial Misconduct, under case #96-80370.

Plaintiff/appellant's reasons why he respectfully requests that oral arguments be heard in the instant case:

A. Facts Supporting Oral Argument

In addition to pressing the instant appeal, plaintiff also filed a Complaint of Judicial Misconduct, pursuant to 28 U.S.C. 372(c), against the district judge who presided over the case below. (Judge K.M. Wardlaw) [96-80370, pending]

Plaintiff also filed a "citizen" Complaint with the United States Attorney against Mr. Robert Cramer, the attorney-of-record for Defendant/appellee in this case. [commencing July, 1991]

The judicial misconduct complaint against Judge Wardlaw, alleges facts highly probative that Judge Wardlaw's regulation and disposition of the case below, constitutes the obstruction of the administration of justice, under 18 U.S.C. 1503. See Braatelier et al. v. United States, 147 F.2d 888, 889, 895 (8th Cir. 1945) (holding district judge can be liable for criminal obstruction of justice)

The complaint to the United States Attorney against Mr. Robert Cramer, alleges violations of criminal perjury and subordination of perjury, under 18 U.S.C. 1621 and 1622.

At **page 23 through 25** of plaintiff's opening brief, supported with **ER 22** @ its **page 22,** he demonstrated that at close of the hearing on the City's motion to dismiss the Complaint upon which the instant appeal is based, Judge Wardlaw, sua sponte, abandoned the City's pleading on its dismissal motion, as it related to the false contention plaintiff had retired from his employment **before** he was fired. At **page 40** of his opening brief, plaintiff further demonstrated how the district court replaced the above **false** contention of the City with **false** findings of its own: that plaintiff was terminated, **effective August 5, 1987,** but he then made his retirement from the same employment, **effective August 1, 1987. (ER 23, Order, page 2)**

On the other hand, the district court's order **(ER 23)** that replaced the City's false contention with its' own, did so, without identifying the source/origin of its finding of fact that plaintiff retired, **effective August 1, 1987,** after the termination, purported as **effective August 5, 1987.** id. Order, page 2.

B. Reason For Oral Argument

Plaintiff respectfully requests that he be granted oral argument in this case. In order to augment the record with

facts from the complaint of judicial misconduct and with facts from his complaint with the United States Attorney. Those facts will show, or tend to show, that the above disposition regarding plaintiff making an employment retirement effective before his termination, **(ER 23, Order page 2)** were facts willfully interposed by sworn declaration, in his earlier cause of action for discrimination in employment: **(ER 29, see also ER 16, page 2)** by person defendant Connie Castruita (ER 29) and by Mr. Robert Cramer, and under circumstances where both of them knew to be false. **[18 U.S.C. 1621, 1622 and 1623]** Oral argument will further establish that the district court in the present case for declaratory judgment, sua sponte, knowingly relied upon the perjured matter of the "Castruita" declaration, filed by "Cramer" in the earlier case for employment discrimination, as legal justification to dismiss the instant Complaint for relief. **(ER 23, page 2)**

The Order dismissing the instant complaint, **(ER 23)** did not identify that its facts purporting that plaintiff had retired after the termination, had been from the declaration filed by the City in the earlier case for discrimination. Neither had the declaration been disclosed by the Circuit Court panel, in its resolution of the prior case for discrimination. **(ER 16)** Furthermore, plaintiff did not discover the declared statement now in question, until after the pleading on the instant appeal had closed.

C. Judicial Notice Alternative

In the event the Court deems oral argument unnecessary in the present case, plaintiff respectfully request the Court take judicial notice of the entire record of the Complaint of Judicial Misconduct against Judge Wardlaw, that was filed by plaintiff pursuant to 28 U.S.C. 372(c). The City defendant and its' attorney, Mr. Robert Cramer, have been noticed as to all of the facts and contentions of the misconduct complaint. Those facts are mot materially different than as set forth by plaintiff's pleading on the instant appeal: in the motion (unanswered) for disqualification of named Circuit Judges, that was filed in the instant appeal on

January 25, 1997; in plaintiff's opening brief; and, in plaintiff's reply brief.

Court records of the Court of Appeals, including records of judicial misconduct, can be the subject of judicial notice. [F.R.E. 201(b); also see prior case decided by the Honorable Clifford Wallace, who, while Chief Judge of the Circuit, found that judicial misconduct records before the Chief Judge of Circuit, constitute a court record, thus subject to judicial notice]

Dated: May 10, 1997 **Respectfully submitted**

_____

Ronald Williams

In pro se

3905 Inglewood Blvd., #307
LA, CA 90066

(310) 397-4195

******* End of Document *******

APPENDIX DD - (herein) PLAINTIFF'S PETITION FOR REVIEW OF THE CHIEF JUDGE'S ORDER DISMISSING COMPLAINT OF JUDICIAL MISCONDUCT

[Filed September 30, 1996; Decided August 28, 1997]

Clerk,
United States District Court of Appeals
For the Ninth Circuit
121 Spear Street,
Post Office Box 193939
San Francisco, California 94119-3939

TO THE CLERK OF THE COURT

I HEREBY PETITION THE JUDICIAL COUNCIL FOR REVIEW OF THE CHIEF JUDGE'S ORDER DISMISSING MY COMPLAINT OF JUDICIAL MISCONDUCT: AGAINST THE HONORABLE KIM McLANE WARDLAW, UNITED STATES DISTRICT COURT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA: THE JUDICIAL MISCONDUCT COMPLAINT, BROUGH UNDER 28 U.S.C. 372. **[96-80370]**

On or about **September 30, 1996,** I filed the subject complaint against **Judge Wardlaw.** The Complaint alleged that she was presiding over my case for declaratory judgment, in violation of **28 U.S.C. 455a (should be 455b)** by not recusing herself, sua sponte - primarily by virtue of her spouse's "advisor" relations with the City of Los Angeles - the defendant in my cause of action for declaratory judgment. **Williams vs. City of Los Angeles, CV-93-2873 KMW (formerly AWT - A. Wallace Tashima)** The Complaint of judicial misconduct also alleges and supports with documents, that the subject judge's regulation of the entire case for declaratory judgment, evinces a clear, distinct pattern, of her willful refusal to conduct the case under applicable rules of federal procedure.

The judge's willful refusal to comply with applicable rules, is also alleged as intentional and purposed to resolve my federal action for relief in the City's favor, but based upon the misrepresentation, mischaracterization, and misapplication of the **law-of-the-case of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991).** The subject judge is also alleged to have worked in tandem with the City's counsel, in the effective omission, exclusion and failure to consider the **law-of-the-case of Williams vs. City of Los Angeles, Cal.App.2nd Civ. B035287 (Aug. 10, 1989).**

The "materials" that were filed in support of the judicial misconduct complaint, were, among others:

(1) a copy of the State Court of Appeals decision of August 10, 1989;

(2) a copy of the State Court of Appeals decision of May 10, 1991;

(3) relevant excerpts of the City's memorandum and declaration, that was filed in opposition of my motion for default judgment on the complaint for declaratory judgment;

(4) the Reporter's Transcript of Proceedings of the hearing on my motion for default judgment;

(5) the Order Setting Aside Entry of Default and Denying (my) Motion For Entry of Default Judgment;

(6) relevant excerpts of the City's motion to dismiss (my) Complaint for Declaratory Judgment; and,

(7) the Reporter's Transcript of Proceedings on the City's Motion To Dismiss and Dismissal With Prejudice - against my Complaint for Declaratory Judgment.

Order of the Chief Judge, Dismissing The Complaint For Judicial Misconduct.

By the responsive Order filed, **August 28, 1997,** the Honorable Proctor Hug, Chief Judge for the United States District Court of Appeals for the Ninth Circuit, dismissed the entire Complaint of Judicial Misconduct, against district judge Kim McLane Wardlaw.

The "dismissal" Order cites the "Code of Conduct for United State Judges" ("the Canons") as the body of rules where "federal judges' ethical duties are set out" The Order also **limits "Canons 2(b), 5(B) and 5(G) as the "only Canons possibly implicated by the complainant's charges". [Order, p.4]**

Reasons Why The Chief Judge Should Not Have Dismissed The Complaint of Judicial Misconduct, Brought Against The Honorable Kim McLane Wardlaw

The instant petition for review of the Chief Judge's Order, is respectfully presented, based upon the following reasons and contentions:

I. The factors giving rise to the Complaint of Judicial Misconduct, also appear to fall with the provisions of **Canon Number 1,** in that, the allegations describes a "pattern" on the judge's part, of manifest failures to comply with the applicable rules of federal procedure - practiced by the subject judge, throughout the entire course of the Complainant's attempt to prosecute the federal cause of action for declaratory judgment. Thus, when the judge granted the City's dismissal motion, this resulted in the deprivation of my Constitutional Right to maintain and to try the cause of action for declaratory judgment, under the Constitution's Supremacy Clause, and 28 U.S.C. 2201, 2202, and in accordance with Federal Rules of Civil Procedure, Rule 57.

II. The factors giving rise to the Complaint of Judicial Misconduct, also appear to fall within the provisions of Canon **Number 2,** in that, the allegations set forth, with specificity, the court rules that were purposefully and intentionally disregarded by the subject judge, as she regulated my Case for declaratory judgment. **Furthermore,** in each and every instance when she had **not** complied with an applicable federal rule, the judicial misconduct complaint demonstrates that it prejudiced my case and aided the City's case.

Canon 1, <u>A judge should comply with the law - by establishing and by maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary should be observed.</u> " . . . *Although judges should be independent, they should comply with the law . . . Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text, and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity . . ."*

The "sets of supplemental materials" in support of the Complaint of Judicial Misconduct, among others, are: **(1)** the *two* decisions of the State court of appeal; **(1989 and 1991)** the **Order** filed by the subject Judge on **June 27, 1996,** Setting Aside Entry of Default and Denying (my) Motion for Default Judgment (on Complaint for Declaratory Judgment); and **(3)** the **Judgment** and **Order** Granting City Defendant's Motion To Dismiss and Dismissal With Prejudice, against the declaratory judgment complaint - the dismissal order filed by the subject judge on **December 27, 1996.**

A. <u>*The Misconduct Complaint Alleges The Subject Judge and Counsel Worked In Tandem In The Fabrication of Evidence To Defeat The Substantive Claims of the Action For Declaratory and Injunctive Relief*</u>

The judicial misconduct complaint alleges that the two decisions of state court of appeals, when viewed with the two Orders filed in my case for declaratory judgment:

(a) established that the subject judge knowingly, intentionally, and, on the City's behalf, and to my extreme prejudice, fraudulently mischaracterize and misapplied the **law-of-the-case of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991)** and

(b) she effectively omitted, by failing to consider the **law-of-the-case of Williams vs. City of Los Angeles, Cal.App.2nd Civ. B035287 (Aug. 10, 1989)**

The *"mischaracterization"* and *"omission"* on the part of the subject judge is alleged to have sanctioned, by judicial decisions, the City's scheme and design, that falsely changed the **course,** the **scope** and the **legal position** of myself as a complaining party in the federal courts: **(1)** from a plaintiff seeking federal remedies from the deprivation of my employment, after the decision of the California Courts, declaring the termination as wrongful; to **(2)** a plaintiff who is barred from such relief, because he had voluntarily surrendered his position of employment. ("Retirement")

Furthermore, *scienter,* on the part of the subject judge and the City's counsel to fabricate the evidence of the State appeal decisions is shown from the fact that, **both** the **Pleading** of counsel and the **Orders** of the judge: **(1)** misrepresents the **1991** State appeals decision as upholding that I voluntarily surrendered by employment, in the fact of the decision that acknowledged I was terminated from my employment; and **(2) omits** the law-of-the-case of the **1989** State appeal decision. Had the **judge** and **counsel** not omitted the law-of-the-case of **Williams vs. City of Los Angles, Cal.App.2nd Civ. B035287 (Aug. 10, 1989),** counsel's pleading and the judge's decisions would have been exposed as **false** and **frivolous. id.** *resolution of successful state court prosecution for writ of under the state's remedial scheme for public safety officers.*

B. ***The Misconduct Complaint Demonstrates A "Pattern of Improper Activity" Against The Judge, The Results of Which Is Shown To Be An Obstruction of the Administration of Justice, Under the Declaratory Relief Act, Upon Which My Complaint For Federal Relief Was Based and Authorized***

Included among the "sets of supplemental material" is a copy of my **Motion to Recuse** the subject judge. (Pages **22** through **28;** attached **Declaration** @ Items **23** through **31**) As an action **not** answered by the City, the motion averments set forth the "pattern" of conduct against the subject judge, of her willful refusal to comply with any of the applicable rules of

federal civil procedure, while presiding over my case for declaratory judgment. A summary of that "pattern" is helpful.

1. Regarding Federal Rules of Civil Procedure, Rule 7 - [the "law-of-motions"]

"An application to the court for an order shall be by motion." Furthermore, when granting of relief sought by a litigant would operate to **terminate, impair** or **modify** a substantial right or claim of another, due notice of the proceeding must be given the person so effected, in order to meet the requirements of due process. **England vs. Doyle, 281 F.2d 304, 306 (9th Cir. 1960)**

The judicial misconduct complaint and supporting "materials", allege and support that at the hearing on my motion for default judgment, under **Federal Rules of Civil Procedure, Rule 55(b)(2),** the subject judge abruptly and without **any** notice, converted the issues to a **Rule 55(c)** hearing, to adjudicate alleged **"good cause"** to relieve the City of the Clerk's default, that had been entered and maintained against the City, for a period of **3 years.** That such a **conversion** of the **rules** and **issues** took place is demonstrated by the **Order** subsequently issued by the Judge. (See "Legal Standard", Order Setting Aside Entry of Default", page 2)

Thus, when the judge issued the responsive Order, inter alia, that set aside the Clerk's Default against the City, this **"terminated"** the right accorded me under **55(a),** to maintain the default against the City, which **"impaired"** my right to a judgment of default. The "termination" and the "impairment" of my rights under the applicable rules governing defaults, as I said before, did not come about by an action initiated by the City, with my **prior** notice. **But rather** as the subject judge's knee jerk response to a request, the City had included with its' **not timely** filed opposing memoranda to my default judgment motion. **See Olson vs. Stone, 588 F.2d 1316, 1319 (10th Cir. 1985)** (non-defaulting party is entitled to present controverting evidence that demonstrates the absence of excusable neglect) . . . In the present case, not only was the

default relief based on a legally deficient request, by the subject judge, under **Rule 6(b)(2) FRCP** and **Local Rule 7.9.** ought not to have considered any part of the City's opposing memorandum to my default judgment motion.

What I have just described as my action for a judgment by default, evinces the high degree of bias the subject judge displayed the City. Here was a City defendant 3 years delinquent and continuing, as it pertains to answering a properly served Complaint, being relieved from any consequences, based upon an opposing memorandum, itself filed **one week late!!!**

2. **Regarding Federal Rules of Civil Procedure, 4 and/or 5(b) (governing the law of proper notice of a filed complaint): As Those Pertain to Rule 55(a), and Proof of Default.**

Under fundamental rules of notice requirements, once a party effectuates service of summons and complaint, and, thereafter, files proof of service with the Court, and, thereafter, applies for and obtains a Clerk's entry of default: evidence of proper formal notice is a matter of law. Thereafter, when the party served fails to plead or otherwise defend a properly served Complaint, that non-defaulting party is entitled to a default, also as a matter of law.

The subject judge's order setting the Clerk's default aside, **[@ p.2 and p.4]** perhaps best demonstrates the judge's bias and refusal to comply with fundamental rules of federal civil procedure. In the face of proofs of service under **Rules 5(b)** and another under **Rule 4 F.R.C.P.,** as well as the Clerk's Entry of Default on file with the Court, the judge rejected by claim of default, by finding: "despite its (City's) failure to respond, (answer complaint) it does not appear that the City desires to avoid defendant the suit or that its failure to answer was the result of culpable conduct".

Finally, as my not answered motion for recusal raised. **{@ p.26-27}** When the judge based her decision to deny my default judgment motion, that the 3 year default did not prejudice my cause of action, **[set aside order, p.4]** no

consideration was given by the judge, that the delay constituted denial of my fundamental right to a fair, just and **speedy trial,** as the Supreme Court held in **Logan vs. Zimmerman Brush Co., (1982) 455 U.S. 422, 428-31, 192 S.Ct. 1148, 1153-55.** Not to mention that the clarification of rights and obligations that would have come about by timely litigation of the action for declaratory judgment, would have established my prima facie case for employment discrimination. {see Williams vs. City of LA, Cal.App.2nd Civ. B035287 (Aug. 10, 1989) (holding I was deprived of my employment, based upon impermissible factors) And, it would have prevented my losing the discrimination case, based upon the reason I voluntarily retired from my position of employment. {See Williams vs City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) (at no less than 10 places, acknowledged my being terminated and securing affirmed judgment setting it aside)

Hence, from the foregoing, it constituted not only a non-compliance of applicable rules when the City defaulted in answering the complaint for declaratory judgment, it was an obstruction of the administration of justice, under the Civil Rights Act and related statutes.

3. **Regarding The Subject Judge's Dismissal Of My Complaint For Declaratory Judgment, Allegedly Under Federal Rules of Civil Procedure, Rule 12(b)(6) - but Regulated and Disposed of In Contravention of Rule 12(b)(6), 56, As Well As Federal Rules of Evidence, Rule 201.**

In any case where the district judge elects to consider matters beyond the party's pleading, in deciding a **Rule 12(b)(6)** motion; the action on the motion is treated as provided in **Rule 56.** Under **Rule 56(c),** the non-moving party is entitled to ten days notice, before the time of the hearing. The **"ten-day-notice"** requirement is applicable, even when the Court intends to consider matters, sua sponte. **See U.S. vs. Grayson, 879 F.2d 620, 625 (9th Cir. 1989)**

The judicial misconduct complaint alleges that when the subject judge abandoned the City's pleading on its motion to dismiss my complaint for declaratory judgment, I was entitled to sufficient, timely notice, of what matters the Court intended to consider, if outside the City's pleading. The motion hearing transcript **(@ pages 21-22)** presented as a supplement to the misconduct complaint, demonstrates that I raised my rights to proper notice, at the dismissal proceeding.

Never-the-less, the subject judge's responsive order (fact finding) demonstrated, that the judge not only considered matters beyond the City's pleading, but relied upon such to grant the City's motion to dismiss my complaint for declaratory judgment. The City's pleading had set forth that, under Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 **@ pages "1629-30",** the decision was that **before** the City terminated me from my employment, I voluntarily retired from my employment. **On the other hand,** citing the same State appeal decision, the subject judge found it to hold that after the **"effective date of my termination on August 5, 1987",** I applied with the City's pension department to be retired, **"effective August 1, 1987".**

Furthermore, even under the rule governing judicial notice, **[Fed.R.Evid. 201]** I am entitled to prior notice. Where a party is deprived of the opportunity to adduce evidence on a critical fact placed in issue by judicial notice, the effect of that notice is not supportable. **Colonial Leasing Co. of New England, Inc. vs. Logistics Control Group International, 762 F.2d 454 (5th Cir. 1985). Moreover,** an investigation of this matter pursuant to my judicial misconduct complaint, would have disclosed that facts that I voluntarily retired, **after** being terminated, are facts that can not only be reasonably questioned, **{Fed.R.Evid. 201, See also Hardy vs. John-Manville Sales Corp., 681 F.2d 334 (5th Cir. 1982). But** are facts the complaint for declaratory judgment and its attachments establish as false. {See Complaint and its **exhibit "F",** copy of the first of two orders terminating my employment - documenting effective date, as **July 30, 1987**}

In the present case, the judicial misconduct complaint was not a response based upon denial by the judge of my opportunity to present written and oral argument. **[See Chief Judge's Order, p.9-10] But rather,** the judicial misconduct of the judge, is the manner she regulated hearing on the City's dismissal motion. In a manner that violates the federal rules of civil procedure. **All of them,** particularly those that provided me a right to present and respond to evidence. [Defenses without prior notice]

Specifically, that part of dismissal hearing, when the judge indicated her intent not to rely upon the City's pleading on the motion, but to access other parts of the record. The judicial misconduct alleged, was the Judge's willful violation of the Rules, that ensure I had **prior** notice, and **time** to respond, to **any** matter the Judge intended to consider, **beyond** the City's pleading. **See U.S. Grayson, 879 F.2d 620, 625 (9th Cir. 1989).** The subject hearing Transcript **[@ p.21-22]** illustrated to the Chief Judge, that I raised that objection, at the instant that I was made aware of the Judge's intent **not** to rely upon the City's motion pleading, but to seek out and rely upon other evidence. **Furthermore,** I never, as the Chief Judge opinioned, **{Order, page 9-10} said** that I had not been accorded the opportunity to present opposing arguments at hearing on the City's motion to dismiss my complaint for declaratory judgment. Even though I would argue, that the responsive order granting the motion, illustrates that all of my arguments and evidence was ignored, including proof of the City's **misrepresentation.** {of 1991 State court of appeal decision, as feigned legal evidence of voluntary surrender of my employment}

Again, the Order subsequently filed by the judge from the hearing on the City's motion to dismiss, **[Order @ p.2]** established that the purported facts relied upon by the Judge to dismiss my Complaint for Declaratory Judgment, had **not** been a part of the City's pleading on its' motion to dismiss. **But rather,** it was shown to have originated from a **sworn** Declaration that had been interposed by the City, in my earlier

case for employment discrimination. **[See Williams vs. City of Los Angeles, CV-90-1252, Clerk's Record of City's Motion For Summary Judgment @ Declaration of Connie Castruita, Items 10-13]** The "Castruita" declaration under perjury, **falsely** sets forth that the state appeal court, held that **after** I was terminated from my position of employment, **effective, August 5, 1987, I** thereafter applied with the City's pension department for a service pension retirement, and it was made **effective August 1, 1987.**

Finally, even though the scenario that I was terminated, effective on the **5th of August,** and then retired, effective on the **1st**, constitutes the determination of the 9th Circuit Court of Appeals, in resolving my employment discrimination case. **Williams vs. City of Los Angeles, CV-90-1252 AWT.** An investigation of the matters of my **Complaint of Judicial Misconduct,** would have disclosed that facts I was fired, **effective August 5th**, but arranged to be retired from the same employment, **effective August 1st**, (1987) was the product of a **false** declaration, of person/defendant Connie Castruita, and filed by Mr. Robert Cramer, in my **prior** but since concluded case for employment discrimination. Thus, the "Castruita" declaration, was shown to be filed under circumstances shown to be **criminal perjury; [18 U.S.C. 1621] subornation of perjury; [18 U.S.C. 1622]** therefore, also a **criminal obstruction of justice. [18 U.S.C. 1503, See United States vs. Dunnigan, 502 U.S. 87 (perjury constitutes obstruction of justice)]**

Finally, it is respectfully requested that the judicial counsel review the Determination of the Chief Judge that there was no evidence submitted that the attorney's mis-characterization was intended to mislead the judge, that the judge allowed the attorney to mislead her regarding the appellate court decision, or that the judge has relied on the attorney's characterization. [Misconduct dismissal Order, pages 10-11]

Actual improprieties under this standard **{Canon 2}** include **violations of law, court rules** or other **provisions** of

this Code. **[Commentary 2]** A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. **Canon No. 1.** When assessing whether or not an attorney's filed paper is frivolous under **Rule 11, Fed.R.Civ. Proc.,** the standard is "the reasonable man against which conduct is tested is a competent attorney admitted to practice before the district court. **Zaldivar vs. City of Los Angeles, 780 F.2d 823, 830 (9th Cir. 1986)**

Here, the judicial counsel is respectfully requested to apply the above, Rule 11 standard to the City's attorney and the pleading he filed in my case for declaratory judgment, as it pertained to his characterization of the State Court of Appeal decision, under **Williams vs. City of Los Angeles, 229 Cal.App.3d 1627, 1629-30.** The pages underlined, show that what he represents the holding to be is false. When he cited the pages as holding **"before** the disciplinary penalty (of termination) could be applied and enforced (against me) I elected to apply for a service retirement". **See submitted materials "Defendant City of Los Angeles' Memorandum of Points and Authorities In Opposition To Plaintiff's Motion For Default Judgment; Declaration of Robert Cramer, pages 3-4 and 10 (Cramer's sworn declaration) See also, Memorandum of Points and Authorities In Support of Defendant's Motion To Dismiss Complaint Pursuant To FRCP Rule 12(b)(6).**

However, precise pages **"1629-30"** of the just cited State appeal opinion, contrary to the pleading and declared statement of Mr. Cramer, in dicta, acknowledged that I had been terminated, and also recognized after a two year litigation in State court, I had prevailed by an affirmed judgments setting the termination aside.

I respectfully submit that, as an attorney licensed to practice law before the district court, Mr. Cramer - **knew, had reason to know** or is **held** to know that the May 10, 1991 State appeal decision, had **not** determined that I voluntarily

surrendered my position of employment. But rather, had acknowledged my being terminated. **Furthermore,** Mr. Cramer **knew, had reason to know** or is **held** to know that the State Court of Appeal opinion that had really decided the manner my employment ended was decided under **Williams vs. City of Los Angeles, Cal.App.2nd Civ. B035287 (Aug. 10, 1989)** Scienter is also established against Cramer, from the fact that none of his pleadings filed with the district court made any mention of the State Court of Appeal resolution of 1989. **Instead,** Cramer's district court pleading feigned as if my State court cases had only been the subject of a single appellate court review - the decision on May 10, 1991.

Finally, I submit tha the ***proof is in the pudding,*** as far as counsel's and the subject judge's intent, why they mischaracterize the **May 10, 1991** state appeal decision, while omitting reference and/or citation of the **August 10, 1989** decision. The action for declaratory judgment is an action under federal deprivatory statutes. Hence, it follows that litigation (counsel) and findings (judge) that disavowed that a termination of my employment took place, would leave me without standing **(Fed.R.Civ. 12(b)(1))** to maintain any federal cause of action, under federal deprivation statutes. **Thus,** feigning and reliance upon State court authority of my voluntary employment retirement, is shown as for no other reason, that to illicitly deprive me of federal rights to prosecute the action for declaratory judgment - just as counsel and previous federal courts feigned my retirement, to defeat my prior action for employment discrimination. **[See Williams vs. City of Los Angeles, CV-90-1252; (decided by then district judge A. Tashima) and CA-94-56250 (decided by circuit judges Beezer, Brunetti and Noonan)**

Canon No. 3

A judge should be faithful to and maintain professional competence in the law, and should not be swayed by artisan interest, public clamor,or fear of criticism. *A judge* ***shall*** *disqualify himself or herself in a* ***proceeding*** *in which*

*the judge's impartiality might reasonably be questioned, **including** but **not limited** to instances in which (c) the judge knows that, individually . . ., the judge or the judge's spouse . . . has a **financial interest** . . . in a party to the proceeding . . ."*
*"(c) **financial interest** means . . . relation as . . . **advisor, or other active participation in the affairs of a party . . ."***

In **Liteky vs. United States,** decided by the U.S. Supreme Court on **March 7, 1994,** the Court recognized and acknowledged that one of the "massive changes" that Congress made to 28 U.S.C. 455, included subsections **"(b)(2)" through "(b)(5)":** providing objective and spelled out **"interest"** and **"relationship"** grounds of recusal. Subsection **"(b)(4)"** is where **"455"** currently mandates under the present circumstances, that subject Judge K.M. Wardlaw's continued jurisdiction of my case, was, at all times, prohibited under **28 U.S.C. 455 et seq.** The newspaper articles I submitted which the Chief Judge acknowledged, constitutes judicially noticeable facts of the Judge's spouse relationship as a **"advisor"** of the defendant City's chief executive officer. Furthermore, the affairs of the City, that the judge's spouse participated in, are clearly within the meaning of subjection 4 or **28 U.S.C. 455(b).** Hence, the **"advisor"** status that the judge's spouse enjoys with the City, coupled with his **participation in its affairs,** should have prompted the subject judge's recusal. Failure to do so, is a violation of law, [also] punishable under **Canons 1 and 2.**

It is respectfully countered that the Chief Judge's Order **[page 5]** is in error that the judge's spouse doe not have a **financial interest** in the City, as contemplated by **28 U.S.C. 455(b) et seq.** As stated above, all that need be shown is that the subject judge's spouse enjoys a relationship as an **"advisor"** and that he is an **"active participant in the affairs of the" City. See Liteky vs. United States,** U.S. Supreme Court, and decided **March 7, 1994.**

My complaint centers on the judge's spouse's **participation in the affairs of the City defendant of my case.** My later contention against the judge herself also

centers on her similar **"participation in the City's affairs",** while in her **1994-95** role as its **"advisor",** which she functioned, right to the date of her appointment as a judge for the district court - reported to have occurred during the latter part of **1995.**

As the Order subject to the instant petition alludes, **[page 1]** I submitted four sets of supplemental material to the **Complaint of Judicial Misconduct.** The last set included a newspaper article - **LA Times, dated June 24, 1997. [@ Pages A-1 and A-14]** The "supplement" and the "article" reported the subject judge's participation in the affairs of the City of Los Angeles, concerning a project to enrich the City's treasury, in the amount of 58 million dollars. It also informs that the subject judge had also functioned as an **"advisor"** for defendant City.

Attached too and made a part of the instant petition, are the subject deposition transcripts: the sworn testimony of the subject judge, as well as her spouse, William Wardlaw. Each, constitute evidence of both their involvement with the City as one of its' advisors, and, each constitute evidence of both their active participation in the "58 million dollar project" In pertinent part:

The deposition testimony of **Judge K. Wardlaw,** that was taken on **March 19, 1997: (1) page 7 through 8 -** sworn testimony that she was an "advisor" / "senior advisor" for the City of Los Angeles, during the years 1994 through 1995; **(2) page 11-16 and 27-29 -** sworn testimony regarding the judge's input as to compensating hired consultant Hubbell; **(3) page 34 -** sworn testimony concerning a conversation the judge had with a person named **Arkatov,** where both the judge and Arkatov admit it was the latter's idea to hire Hubbell, regarding the "58 million dollar project"; and **(4) page 21 -** sworn testimony of the subject judge's presence in Washington DC with the City's Major, on the federal "crime bill". (Noting that the crime bill featured granting millions of dollars to the City to defray costs it wold otherwise incur, regarding crime)

The deposition testimony of the subject judge's spouse, **William Wardlaw,** that was taken on **April 7, 1997: (1) page 7-8** - sworn testimony of his being an **"advisor"** on "various" and "political" policy issues; **(2) page 8-10** - testimony as to being consulted by the City's airport commissioner, **before** the commissioner **hired** Mr. Hubbell, **page 18-19, 20-23** - of being consulted with by the commissioner, **before** the commissioner **fired** Hubbell; **(3) page 13** - consulted with spouse, the subject judge, regarding Hubbell; **(4) page 25,** testimony of participation with conference regarding the "58 million dollar", benefiting the City of Los Angeles.

The subject judge's intent, I submit my complaint illustrates, was to rid her docket of my cause of action for declaratory judgment, despite the action being clearly authorized by statutes - **28 U.S.C. 2201 and 2202,** and applicable federal rules. The Record shows that the judge may have been motivated by two factors:

One, to save the City from liability, based upon her bias in favor of the City, borne from her and her spouse's relations with the City; and

Two, the fact that a full, fair prosecution of the case for declaratory judgment, as this stage of my case(s), would place the lower district court in the unique position of scrutinizing, under the Constitution and Federal Law, the conduct of a former district judge, as well as judges of the 9th Circuit Court of Appeal.

In the Order prompting the instant petition, the Chief Judge opinioned that "it appeared based on the findings in prior state and federal decisions regarding my termination, that the city's attorney presented the chronology of [my] termination in a **confusing,** perhaps **inaccurate** manner" **[Order, page 10]** That finding is consistent with precisely the contentions of my complaint for judicial misconduct. Namely the allegations:

That the City before knowing federal judge, thus judicial misconduct, litigated, successfully, the issues of the State court decisions in the City's favor: But in a manner that

obfuscated what had been decided by the State appeal courts. And, further alleges,

That the City's litigant's and District Judge's reasons, to the exclusion of any other reason, was to cover-up the legal evidence of State court decisions of my wrongful termination, with conjured and feigned legal evidence that I voluntarily retired from my employment.

For all of the above reasons and authorities, I request that the Judicial Council, review and take whatever further action that the law provides, on my Complaint of Judicial Misconduct, filed on **September 30, 1996,** against the Honorable Kim McLane Wardlaw, Judge for the United States District Court for the Central District of California.

Dated: September 15, 1997 Respectfully submitted,

Ronald Williams

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APPENDIX EE- (excerpt) DECISION OF THE CALIFORNIA COURT OF APPEAL FOURTH APPELLATE DISTRICT, Division ~~One~~

EMPLOYMENT LAW

No Demurrer Where Former Employee Pleads Facts Establishing Entitlement to Reinstatement to Former Position.

Cite as Daily Journal D.A.R. 13195

MICHEAL LUCUS
Plaintiff and Respondents
v.
STATE OF CALIFORNIA et al.,
Defendants and Respondents.
No. D026856
(Super Ct. No. 696169)
California Court of Appeal
Fourth Appellate District
Division One
Filed October 22, 1997

Appeal from a judgment of the Superior Court of San Diego County, Charles R. Hayes, Judge. Reversed.

Richard M. Radosh for Plaintiff and Appellant.

Daniel E. Lungren, Attorney General, Silvia Diaz and David M. Tiede, Deputy Attorneys General, for Defendants and Respondents.

Plaintiff Micheal Lucas appeals a judgment dismissing his lawsuit against defendants State of California, Jose Fernandez, Joseph Cottingham, and C. Lance Barnett (together State) after the superior court sustained without leave to amend the State's demurrer to his complaint for federal civil rights violation, wrongful termination, and writ of mandate. Concluding Lucas's complaint alleged facts sufficient to constitute causes of action, we reverse the judgment.

I

INTRODUCTION

The State notified Lucas his civil service employment was terminated for cause. Lucas appealed to the State Personnel Board (SPB). While awaiting hearing before the SPB, Lucas applied for and obtained service retirement from the Public Employees Retirement System (PERS). On the date scheduled for the SPB hearing, the State withdrew its disciplinary action against Lucas. Asserting such withdrawal effectively reinstated him to his position, Lucas unsuccessfully sought reinstatement from the State Department of Personnel Administration (Personnel Administration). Lucas then requested a SPB hearing to clear his name and reinstate him. Claiming lack of jurisdiction, the SPB declined.

Lucas filed this lawsuit seeking reinstatement to his former position and damages. Concluding Lucas voluntarily resigned from his job by obtaining service retirement and did not timely seek reinstatement, the superior court sustained the State's demurrer without leave to amend. However, since Lucas adequately pleaded claims against the State under applicable statutes, we conclude the court erred in sustaining the State's demurrer. Specifically, as we shall explain for

purposes of surviving demurrer, the facts pleaded by Lucas were sufficient to establish that (1) Lucas was separated involuntarily from state service by dismissal; (2) during pendency of his appeal to the SPB, Lucas sought and obtained service retirement; (3) Lucas's service retirement after involuntary termination did not constitute resignation from service; (4) before the SPB hearing, the State withdrew its disciplinary action against Lucas; and (5) upon withdrawal of the State's disciplinary action, Lucas's involuntary separation from service ceased and he was entitled to reinstatement to his position subject to compliance with applicable PERS requirements.

III

SUPERIOR COURT PROCEEDINGS

A

LUCAS'S PLEADINGS

Lucas's cause of action for federal civil rights violation alleged the State infringed upon his due process rights by denying him an opportunity to be heard and by depriving him of his civil service employment without cause; and the State acted under color of law to deprive him of liberty and property without due process by terminating his employment based on false charges without good cause, not affording him a pretermination hearing or posttermination hearing, and refusing to reinstate him to his job.

Lucas's cause of action for wrongful termination alleged the State's conduct violated fundamental public policy that public employees be terminated only for just cause and with due process.

Lucas's cause of action for writ on mandate under Code of Civil Procedure section 1085 alleged the State acted without authority by wrongfully using civil service termination procedures to terminate his employment and refusing to reinstate him upon withdrawing the notice of adverse action; upon withdrawing all charges against him, the State had a clear, present, ministerial duty enjoined by law to reinstate him to his job; and the State should be estopped from

asserting his service retirement as a bar to reinstating him since the State acted wrongfully/fraudulently to induce his retirement and reinstatement would not harm any public policy.

Lucas's complaint asked the court to enjoin the State from further due process violations against him, grant equitable relief including reinstatement to his former position, and award damages. Lucas's complaint also sought a writ of mandate ordering the State to set aside his retirement and reinstate him to his employment.

B

STATE'S DEMURRER

The State demurred to Lucas's complaint . . . including failure to state facts sufficient to constitute a cause of action since Lucas's alleged harm was assertedly caused not by the State but instead by Lucas's voluntary retirement. . . . . .

After hearing, the superior court sustained the State's demurrer to Lucas's entire complaint without leave to amend. Citing *Coleman v Department of Personnel Administration* (1991) 52 Cal.3d 1102 and *Pyne v. Meese* (1985) 172 Cal.App.3d 392, the court concluded that Lucas's "voluntary retirement" before the SPB hearing "terminated" his "property interest in the procedural safeguards afforded him under" Skelly. The court also concluded: "Therefore, [Lucas's] request for reinstatement was untimely under Govt Code 19996.1 and *Bidwell v. State of California ex rel. Dept. of Youth Authority* (1985) 164 Cal.App.3d 213" The court entered judgment dismissing Lucas's lawsuit.

Lucas appeals.

IV

DISCUSSION

The facts alleged by Lucas were sufficient to plead claims against the State under the governing statutory scheme. For purposes of disciplinary proceedings involving separation from service, the State's dismissal of Lucas was an "adverse action". Lucas was thus separated from service by involuntary termination. After such involuntary termination from service

and pending hearing on his SPB appeal, Lucas sought and obtained service retirement benefits. Before the SPB hearing, the State withdrew its adverse action against Lucas. Upon the State's withdrawal of the adverse action, Lucas was no longer separated from service by involuntary termination. Thus, Lucas pleaded facts that could establish the withdrawal effectively entitled Lucas to reinstatement to his former position unless such right was extinguished by Lucas's service retirement in the interim.

The State contends the superior court correctly determined Lucas's service retirement constituted resignation from employment and Lucas did not timely seek reinstatement from such resignation. However, in light of the statutes governing separation from service, the court's determination was not consonant with the facts pleaded by Lucas. Specifically, section 19140, subdivision (a), expressly distinguishes separation from a civil service position by resignation and separation by service retirement. Similarly, section 19996 expressly distinguishes among separations from service by resignations, removal for cause, and retirement. We thus conclude that since Lucas sought and obtained service retirement benefits only after he was already separated from service by removal for cause (involuntary termination), his service retirement did not constitute a separation from service by resignation. Further, because Lucas was not separated from service by resignation, service retirement or other ground specified in section 19140, subdivision (a), we must also reject the State's attempt to deny Lucas reinstatement by invoking the appointing power's discretion mentioned in that statute.

Our conclusions are consistent with portions of the Public Employees' Retirement Law governing reinstatement from retirement of persons retired for service after involuntary termination and later reinstated to employment. (21198; see also 21220, subd. (a).

Although not precisely applicable because there was no administrative or judicial determination reinstating Lucas to employment, section 21198 is instructive as expressly

contemplating a situation involving reinstatement to civil service of a person retired for service after involuntary employment termination.

In sum, Lucas retired for service after the State involuntarily terminated his employment by dismissal for asserted cause. . . . . Hence, . . Lucas's complaint adequately pleaded facts entitling him to relief against the State under governing statutes.

DISPOSITION

The judgment is reversed. Lucas shall have costs on appeal.

KREMER, P.J.

WE CONCUR

HUFFMAN, J.

HALLER, J.

[***** End of Document *******]**

APPENDIX FF - (excerpts) GENERAL DOCKET FOR NINTH CIRCUIT COURT OF APPEALS, In re: APPEAL FROM ORDER(S) DISMISSING COMPLAINT FOR DECLARATORY JUDGMENT (Docket as of March 25, 1998 3:47 pm)

GENERAL DOCKET FOR

Ninth Circuit Court of Appeals

Court of Appeals Docket #: 97-55070 Filed: 1/21/97

Nsuit: 3890 Other statutory actions (Fed)

Williams v. City of Los Angeles

Appeal from: Central District of California, Los Angeles

Case type information:

1) civil

2) private

3)

Lower court information

District: 0973-2 : CV-93-02873-KMW (Sex)

Presiding judge: Kim McLane Wardlaw, District Judge

Date Filed: 5/18/93

Date order/judgment: 12/30/96

Date NOA filed: 1/21/97
Proceedings include all events.
97-55070

RONALD WILLIAMS Plaintiff-Appellant	Ronald Williams 310-397-4195 [NTC prs] 3905 Inglewood Blvd., #307 Los Angeles, CA 90066
V	
CITY OF [LA]	Robert Cramer, Esq. (213) 485-5420 [COR LD NTC dca] Frederick N. Merkin, Esq. 213/485-6380 Room 1800 OFFICE OF THE CITY ATTORNEY 200 North Main Street Los Angeles, CA 90012

1/21/97	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): no [97-55070] (CASE REFERRED TO MOATT PURSUANT TO FRAP 3.3 (tsp)
1/27/97	Filed Appellate Ronald Williams' motion to disqualify Circuit Judges named herein; [97-55070] served on 1/25/97 [3169197] MOATT [97-55070] (em)
5/2/97	..... Aplt's "Motion for Disqualification of the Circuit Judges" is referred to the merits panel for disposition. This case is ready for calendering.
6/12/97	Filed Appellant Ronald Williams' request that the court entertain oral arguments in the instant case on appeal; alternatively, that the court take judicial notice of judicial misconduct . . . . .
7/18/97	Filed order MOATT (KA) Aplt's request for oral argument is referred to the panel that will

	be assigned to hear the merits of the appeal. [32 46637-1] [97-55070] (gail)
11/3/97	Filed aplt Ronald Williams additional citations, served on 10/30/97 (MOATT) [97-55070]
1/12/98	SUBMITTED TO SCREENING PANEL 227
1/20/98	FILED MEMORANDUM OPINION: AFFIRMED (Terminated on the merits after Submission Without Oral Argument; Affirmed; Written; Unsigned, Unpublished. James R. Browning, author; Andrew J. Kleinfeld; Sidney R. Thomas.) FILED AND ENTERED JUDGMENT. [97-55070] (gail)
1/21/98	Received letter dated 1/19/98 from pro se aplt re: request for judicial ntc. (moot because case closed; to CASEFILE) (gail)
3/16/98	Filed order ...The panel ..deny aplt's pet. for rhrg ... sugg for rhrg en banc. is rejected.
3/24/98	MANDATE ISSUED [97-55070] (jjf)

*********End of Document*********

APPENDIX GG - (excerpts) CIVIL DOCKET, PLAINTIFF'S ("primary") CAUSE OF ACTION UNDER THE CIVIL RIGHTS STATUTES, Filed March 14, 1990

TITLE: WILLIAMS-V-LOS ANGELES CITY

CAUSE: COMPLT/VIOL C/R EMPLOY 1983 JMI

# 1 PLA	
LT RONALD WILLIAMS	**LAURENCE LABOVITZ** **3055 WILSHIRE BLVD #900** **LOS ANGELES, CA 90010** **(213) 487-1520**
#2 DFT. **LOS ANGELES CITY**	**Ronald Williams** **3410 West Fifth St., #215**
#3 DFT **DARYL F. GATES**	**Los Angeles, CA 90020** **(213) 380-5925** **Pltf in propria persona**

#4 DFT
ROBERT McNAMARA

#5 DFT
CONNIE CASTRUITA

#6 DFT
DOES 1-25

DATE		PROCEEDINGS
3/14/90	1.	Complt. Issd. Demand for J/T
4/5/90	2.	Ntc. Of mot & mot, rtnble 5/7/90 at 10:00 a.m. to dsm complt. ***Suggestion of absten tion.*** **Memo is spt. Defts.**
4/18/90	5.	suppl P/S brf.,,pltf.
	6.	opp to dfts motn Dism.,, pltf.
5/10/90	11.	ORDER defts motn Dism DENIED; mttr stayed in entirety til resolution of state state appeal & directs prtys to keep crt informed of stats of stats of state mattr.
01/18/91	14.	On 5/10/90 the crt stayed this actn pending a resolution of a state appeal. Cnsl. were to keep the crt advised of status of the appeal. Cnsl are to file a status report nlt 2/1/91, giving the crt the currt status of the appeal
12/19/91	26.	ORD Pltf's petn to act in propria persona is GRANTED . . . . .
5/29/92	31.	Req to Clerk to enter dflt. Plf.
5/29/92	32.	DFLT BY CLERK as to City of Los Angeles, Chief of Police Daryl F. Gates, indiv; Robert McNamara, indiv.; and Connie Castruita, indiv.
6/4/92	37.	Ntc of mot & mot for dflt jgm., rtnbl 7/6/92 @ 10:00 am Plf.
7/10/92	53.	Notc of mot & mot to dism comp, memo of P/A in support, rtnbl 8-3-92, 10AM. Dfts.
7/20/92	56.	Ntc & mot to strike as to all, dfts motion to

dismiss the instant cmp .....

7/29/92 60. ORD that plf's mot. for dft jgm is hereby DEN.

8/27/92 65. PLF, FLD NTC OF APP TO THE 9th C/A FRM ORD FLD 7-29-92.

8/27/92 66. ORD that the Crt hereby GRANTS in part & DENIES in part dfts' mot. to dismiss. Dfts mot as to the *Title VII Claim* is hereby DENIED. Dfts's mot as to plf's *Section 1985 Claim* is here by GRANTED.

9/22/92 74. ANS TO CMP. Dfts City of Los Angeles, Daryl F. Gates, Robert McNamara, & Connie Castruita.

10/21/92 81. Req for change of crt for reasons of racial & pro se bias; declr of prej.

6/20/94 178 Memorandum of P/A by defendant Los Angeles City Of, defendant Daryl F. Gates, Defendant Robert McNamara, defendant Connie Castruita in support of motion for Summary judgment [177-1] declaration of Connie Castruita, exhibits.

7/27/94 190 JUDGMENT AND ORDER: by Judge A.W. Tashima granting motion for summary judgment [177-1] It is ADJUDGED that plf take nothing, tht the actn is dismissed on the merits & tht defts City of Los Angeles, Daryl F. Gates, Robert F. McNamara and Connie Shall recover frm plf their costs & suit in the Amt of $ _____. (ENT 7-28-94]

[******* End of Document *******]

APPENDIX HH - CIVIL DOCKET, PLAINTIFF'S CAUSE OF ACTION FOR A DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF, filed May 18, 1993

U.S. District Court
Central District of California (Western Div.)
CIVIL DOCKET FOR CASE #: 93-CV-2873

Williams v. Los Angeles City Filed: 05/18/93
Assigned to: Judge Kim Mclane Wardlaw
Referred to: Discovery George H. King
Demand: $0,000 Nature of Suit: 442
Lead Docket: None Jurisdiction: Federal Question
Dkt # in other court: None
Cause: 28: 1331 Fed. Question: Employment Discrimination

RONALD WILLIAMS Plaintiff	Ronald Williams [COR LD NTC] [PRO SE] Pro Se 3410 West Fifth Street, #215 Los Angeles, CA 90020 213-380-5925
v.	
LOS ANGELES CITY OF defendant	Frederick N Merkin [COR LD NTC] Robert Cramer 213-485-5432 Room 1800 [COR LD NTC] Los Angeles City Attorney Office 1700 City Hall East 200 N Main St Los Angeles, CA 90012 213-485-0733

5/18/93	1.	COMPLAINT (Summon(es) issued) (am) [Entry date 05/19/93]
5/18/93	2.	EXHIBITS in suppt of cmp. (dmm) [Entry date 05/19/93]
6/2/93	3.	PROOF OF SERVICE executed upon defendant Los Angeles City on **5/21/93,** by per svc on Gloria (ONLY NAME GIVEN) recep tionist. (dmm) [Entry date 06/04/93]
6/10/93	4.	ORDER RE TRANSFER PUR TO G.O. 224 (Related Case) by Judge Mariana R. Pfaelzer Case reassigned to Judge A.W. Tashima for all further proceedings (L/N CV90-1252 AWT)
6/15/93		DOCUMENT req to ent dflt & dflt jgm Received and Returned - P/S not on authorized Agent for the City of L.A. (yt)
6/21/93	6	NOTICE OF DISCREPANCY AND ORDER that plf req to ent default and default jgm are not to be filed, but rejected & retn to cnsl by Judge A.W. Tashima [Entry date 06/23/93]
6/30/93	8	NOTICE OF MOTION AND MOTION by Plaintiff Ronald Williams to amend ord 6/21/93 Re clks rejection re dft City of LA default on Cmp; motion hearing set for 9:30 7/26/93 [Entry date 07/06/93]
7/1/93	9	ORDER by Judge A.W. Tashima that the noticed hrg date of 7/26/96 is vacated; plf's motion to amend ord 6/21/93 re, clerk's rejection, re dft City of Los Angeles' default on cmp for declaratory relief [8-1] is DEN. (ENT 7/8/93)
7/20/93	10	PROOF OF SERVICE of summons & complt served upon City of Los Angeles, municipal corp., by personal svc on Deputy City Clerk, City of Los Angeles, Julie Amanti on **6/24/93; With acknowledgment. [Entry date 7/22/93]** [Edit date 04/24/96]

7/20/93	--	RECEIVED & RETURNED plf's req to clerk for entry of dflt & deflt jgm, & decls of failure to plead or otherwise defend; amt due; inappli cability of non-military service svc. REASON The req for dflt must be presented as a separate document from the req for dflt jgm. Note that a deputy clerk cannot award the dflt jgm and a formal motion should be noticed bef the Judge if the dft is put into dflt by a deputy clerk. [En try date 07/29/93]
8-2-93	11	REQUEST by plf Ronald Williams to clerk to enter dflt. [Edit date 04/24/96]
8-2-93	12	**DEFAULT BY CLERK as to City of Los Angeles**
8-2-93	--	RECEIVED & RETURNED plf's req to clerk for dflt jgm, decls failure to plead or defend, amnt as can be made certain, & non-applica-bility, infancy, incompetency, non-military svc prop jgm by dflt upon appl to clerk. REASON Deputy Clerk has previously rejected this req to Clerk for entry of dflt jgm. It appears that plf is Seeking deflt jgm for loss of pay & benefits. A Deputy Clerk cannot award back-wages, over-Time, nor benefits. A Deputy Clerk can only Award monies due & owed that can be verified To a "sum certain" (for example a bill of sale, Bank not or loan, agreement, etc.) Plf has not submitted documentation to that effect & does not enumerate the exact dollar amounts being Sought for principal, interest & costs. plf is ad-vised to ntc a formal mot bef the Judge.
8/6/93	13	NOTICE OF DISCREPANCY AND ORDER by Judge Tashima that pro per req for dflt jgm; prop jgm is not to be fld, but instead rejected & retnd to cnsl: Reason: "This is not a Clerk's de-fault jgm. [Entry date 08/11/93]
1/17/96	14	ORDER by Chief Judge Wm. M. Byrne, Pur to

		the recommended procedure adopted by the Crt for the creation of the cal of Judge Kim Mclane Wardlaw, ORD that Judge Kimberly M Wardlaw will assume the pending civil cal of Judge A. Wallace Tashima for all further pro-Ceedings. Case should now read CV 93-2873 KMW (GHKx). [Entry date 01/19/96]
4/1/96	17	MINUTES: IN COURT HEARING RE: OSC re dismissal set on 10:00 4/15/96 by Judge Kim M. Wardlaw CR: n/a [Entry date 4/10/96]
4/15/96	18	MEMORANDUM by plaintiff in support of minutes [17-2] [Entry date 04/18/96]
4/15/96	19	MINUTES: in court hearing held OSC tkn under submission by Judge Lourdes G Baird CR: W.R. Ledge
4/30/96	20	RECEIPT OF TRANSCRIPT of proceedings for the following date(s): 4/15/96 [Entry date 05/01/96]
5/2/96	21	ORDER by Judge Kim M. Wardlaw pltf to move crt for entry of dflt jgmt or otherwise proceed w/prosecution nlt 5/31/96. If plntf fails to do so, crt w/again consider more sanction of dism of case, upon appropriate mot by dft. [Entry date 05/08/96]
5/28/96	22	NOTICE OF MOTION AND MOTION by plaintiff for default judgment against Los Angeles City; motion hearing **set for 10:00 6/24/96** [Entry date 05/29/96
5/28/96	23	DECLARATION by plaintiff Ronald Williams re [22-1] [Entry date 05/30/96]
5/28/96	24	EXHIBITS [Entry date 05/30/96]
6/17/96	25	Memo of PA by defendant Los Angeles City in oppo to plf's motion for default judgment against Los Angeles City [Entry date 6/18/96]
6/19/96	26	Reply Memo by plaintiff Ronald Williams to dft's oppo to the motion for default judgment

against Los Angeles City [Entry date 6/18/96]

6/19/96 27 REQUEST for ordd str, as to all, said dft's oppo sanctions & for ord shortening time to proceed by plaintiff Ronald Williams [Entry date 6/21/96]

6/24/96 28 MINUTES: crt den plf's motion for default judgment against Los Angeles City & sets aside the current dflt jgm by Judge Wardlaw CR: Mark Schweitzer [Entry date 06/26/96]

6/27/96 29 ORDER by Judge Kim M. Wardlaw setting aside default [12-1] as to dft City of Los Angeles & dens Williams' mot. for entry of dflt jgm. Crt ords dft to ans the cmp w/in 20 days or this Ord. (Ent 6/28/96)

7/15/96 31 NOTICE OF MOTION AND MOTION by plaintiff Ronald Williams for order recusing itself, forthw/, from fur conduct of these proceedings, purs to 28 U.S.C. 144 & 455, motion hearing set for 10:00 8/5/96 [Entry 7/16/96]

7/16/96 32 PROOF OF SERVICE by plaintiff Ronald Williams of Plf's Not & Mot in re Recusal by Personal del to Mr. Robert Cramer on 7/15/96

7/16/96 33 NOTICE OF MOTION AND MOTION by defendant Los Angeles City to dismiss cmp, purs to FRCP Rule 12(b)(6); motion hearing set for 10:00 8/26/96 [Entry date 07/17/96]

7/16/96 34 MEMORANDUM of PA by defendant Los Angeles City in support of motion to dismiss Cmp, purs to FRCP Rule 12(b)(6) [Entry date 07/17/96]

7/19/96 35 MINUTES by Judge Kim Wardlaw: Crt having received the plf's mot for ord of Crt recusing itself, etc., fld 7/15/96 it is ORD that said mot is to be heard by a randomly selected District court Judge selected by this Crt's civil Section Further, due to the filing of said mot, the Crt

takes off cal & stays dft's motion to dismiss until plf's mot is ruled upon.

7/19/96 36 REFERRAL OF MOTION to disqualify Judge Kim McLane Wardlaw fld on 7/15/96, purs to G.O. 224 & G.O. 194, referred to Judge A.A. Hauk for determination . . . . . .

7/26/96 37 ORDER by Judge A.A. Hauk denying motion to disqualify Judge Kim McLane Wardlaw ...

*

8/23/96 39 PROOF OF SERVICE of plf Ronald Williams memo of PA re mot dism by personal del to Mr. Robert Cramer on 8/24/96

8/26/96 40 Memo of PA by plf Ronald Williams in oppo to deft's motion to dismiss cmp, purs to FRCP 12 (b)(6) [Entry date 08/27/96]

*

9/4/96 44 Reply Memo of PA by defendant Los Angeles City of in suppt of dft's motion to dismiss cmp, Purs to FRCP Rule 12(b)(6) **[Entry date 09/05 96]**

10/31/96 46 MINUTES: the crt sets oral arg for dft City of LA mot to dism for 12/16/96 at 10:00. The crt Also ords suppl br on the fol 2 iss **1)** whether Williams is entitled to decl jgm purs to **28 USC 2201, 2202** as applied by Dombrowski v Pfister 380 U.S. 479 (1965) & Peters v Hobby, 349 US 331 (1955) & **2)** whether this cs is barred by doctrine of res judicata as interpreted & appl by the 9th Circuit Op brs of 25 pages or less shall be fld/svd ntl 12/6/96 by Judge Kim M. Wardlaw.

11/22/96 **47-48,** Opening BRIEF and (its') PROOF OF SERVICE. . . . . .

11/25/96 49 Supplemental MEMORANDUM of points and authorities by defendant Los Angeles City of in support of motion to dismiss cmp, purs to FRCP Rule 12(b)(6)

11/27/96	**50**	"REPLY Brief" to dft's "Pleading" for hrg on dft's mot to dism cmp by defendant L.A.
12/27/96		**55&56 - ORDER AND JUDGMENT** granting motion to dismiss cmp & termi nating the Case. . . . .
1/21/97	**62**	**NOTICE OF PRELIMINARY INJUNCTION APPEAL**

*********END OF DOCUMENT*********

APPENDIX I.I. - (excerpts) REPLY BRIEF (to Brief of Appellee)

No. 97-55070

IN THE

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

RONALD WILLIAMS **Case No.: 97-55070**

Plaintiff/Appellant

Vs.

CITY OF LOS ANGELES

Defendant/Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

HONORABLE KIM McLANE WARDLAW

REPLY BRIEF

Plaintiff's Reply To Defendant Appellee's Brief

I

In General

The City's scheme of fraudulently misrepresenting the law-of-the-case of Williams vs. City of Los Angeles, 229 Cal.App. 3d 1627 (May 10, 1991), while concealing and failing to disclose Williams vs. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989), as practiced below, has now been demonstrated to the Court here. . . . . .

Skip portions . . . . . , the City has brazenly perpetrated a fraud on this court.

In England vs. Doyle, 281 F.2d 304, 309 (9th Cir. 1960), his Court held: "a fraud upon the court . . . is an . . plan or scheme which is designed to improperly influence the court in its decision. " (citations omitted)

What is even more evident before this Court then below, is that no amount of pleading and proof, including copies of the State appeal decisions at issue, can sway the City from willfully and knowingly falsifying the findings of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May

10, 1991) (Adden 5) while omitting Williams vs. City of Los Angeles Cal.App. 2nd Civ. B035287 (Aug. 10, 1989) (Adden 3). Pleading that feigns as if the State appeal panel in 1989 had not convened and affirmed the superior court's repudiation of the administrative terminations the City had imposed against plaintiff.

The scheme of falsification and omission was practiced with a great deal of success by the City below. Respectfully, however, it should not meet with any success here. The May 10, 1991 State appeal decision, simply did not **dismiss** what is the subject matter jurisdiction of the instant action for federal relief. Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) (in dicta, acknowledged the City's terminations of plaintiff's employment) (herein Adden 5)

All that was decided under Williams vs. City of Los Angeles, 229 Cal.App. 3d supra 1627-1633 & n.3, was that plaintiff should have withdrawn **only** his contributions instead of applying for a pension, **after** the City **terminated him from his employment.** id 1627-1633 and n.3

Williams, 1991 held: because he applied for a pension and it was approved, the City could rely upon its charter section 190.111, **not** to have to comply with the original judgment of the superior court of May, 1988 (ER 5) that had been affirmed by the State appeals court in August, 1989, (Adden 5) setting aside the **termination** (ER4) and restoring plaintiff's employment. . . . . .

*** Skip portions ***

The **"opening brief"** and the **"excerpts of the record"** on this appeal, plead and demonstrates that under controlling State law, Cal.Govt.Cd. 3300 (Adden 2), and a personal mandate of the State's highest court - Baggett vs. Gates, (1982) 32 Cal.3d 128, 136: **affirmed,** that plaintiff's action on the petition for writ of mandate, that was fully affirmed from the City's unsuccessful appeal, is controlling authority regarding his **"primary right"** to continue in his employment.

Moreover, the "Baggett" court enforcing "3300", not only establishes Williams vs. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989) as governing the parties rights and legal obligations - they expressly **preempt** Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991)

- **Page 8**

None of the legal wrangling and mumbo jumbo by the and the court below, should detract from these fundamental truths of the action for declaratory judgment:

1. Because the subject property interest in dispute is conferred to plaintiff by law - "202", and is public employment, it is subject to protection under the 5th and 14th Amendment of the United States Constitution. Board of Regents vs. Roth, (1972) 408 U.S.
2. When the City deprived plaintiff of his employment by the administrative actions of termination, (ER 1 and 4) that triggered State held rights - Govt.Cd. 3300 et seq, to prosecute the petition for writ of mandate - 1094.5 for remedy and redress from the employment termination. Baggett vs. Gates, (1982) 32 Cal.3d 128, 136;
3. After the judgment for writ of mandate commanding the City to set aside the termination order was affirmed by the State Court of Appeal, State law - Govt.Cd. 3309.5(c), mandated that the superior court fully enforce the judgment;
4. Enforcing a State court judgment setting aside a termination, mandates that the Court should have returned plaintiff to the position he occupied, **but for** the termination, which was as a Lieutenant II of Police, retroactive to the effective date of the termination, which was **July 30, 1987,** subject **only** to lost of pay, for a period of 30 days. (ER 6) See United States vs. General Motors, (1945) 323 U.S. 373, 378-379; See also First Lutheran Church vs. Los Angeles County, 1987 482 U.S. 304, 305.

Moreover, also plead was that the aforementioned,

fundamental right to redress and remedy the deprivation of plaintiff's employment property interests, **cannot** be nullified and/or preempted under the City's charter 190.111, ["Baggett"] regardless that the origin of its construction was by an intermediate State court of appeal. See U.S. Mitchum vs. Foster, (1972) 407 U.S. 225, 230, 237; See also Dombrowski vs. Pfister, (1965) 380 U.S. 479, 480, 489-491 (case governing federal court's power to intervene with injunctive relief, exceptions to the Federal "abstention doctrine") *** skip portions ***

***B**

The City Evades And Is Non Responsive To The Argument That The District Court Abused Its Discretion When It Set Aside The Clerk's Default Against The City and Denied Plaintiff's Default Judgment Motion(s), Given The Evidence of the City's Abusive Litigation Practices In The Case.

A judge abuses his or her discretion when the decision is based upon erroneous conclusions of law or where the record contains no evidence on which the judge rationally could have made that decision. Premium Service Corp. v. Sperry, 511 F.2d 225 (9th Cir. 1975)

In the present case, the district court erred by finding the City's reliance on Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 to defend the action for Declaratory Judgment demonstrated a meritorious defense. **First,** the City misrepresented the State appeal decision as legal evidence of plaintiff's voluntary retirement from employment. **Second,** the action for declaratory judgment was a constitutional challenge against the 1991 State appeal decision - a decision that had been decided under a single provision of the City's pension ordinance scheme.

There was no rationale basis for the court to resolve the question of reasonable excuse for the default in the City's favor, to set aside the Clerk's default, for the following reasons:

1. the 1993 record of the two services of the summons and complaint and service of the two pre-trial motions in the case, refutes the finding that the City had no record of the complaint; and,

2. the admission by the City below and here, that the default had been a deliberate litigation stregedy to ensure a favorable outcome in plaintiff's other case for employment discrimination, refutes the Court's rejection of the claim that the default was intentional and culpable; etc.

Moreover, plead below as well as here, was that counsel in support of the case opposing plaintiff's 1996 motion for default judgment, filed and served a perjured declaration, punishable under federal criminal statutes. The City had offered no rebuttal, alternative explanation or excuse of the claim of its criminal behavior.

C

The City Has Admitted Facts Material To The Appeal Issue That The District Judge Was Required To Recuse Herself From This Case, Sua Sponte, As A Matter of Law

28 U.S.C. 455(b), subsection "(b)" is the statute controlling. Accordingly, a judge of the United States is required to recuse himself or herself, in a case where a spouse has a "financial interest" in a party to an action. A "financial interest" is defined at subsection "(4)" as an "advisor" or is an "active participant in the affairs of the party"

The subject motion for recusal from which the order appealed from, argues that there is credible evidence that the subject judge's partiality comes to question, due to her demonstrated unwillingness to provide a scintilla of fairness to any aspect of her regulation of the case below, as evidenced by this virtually unchallenged appeal. . . . .

On the other hand, the issue now being raised for the Court's added consideration, strictly pertains to the statute under 455(a) and its mandate that the subject court should have recused herself on her own. Evidence shows (ER 25) and the City admits, that the subject judge's spouse, in fact, is a legal advisor for herein City defendant.

*** Skip portions ***

Dated: April 11, 1997 **Respectfully submitted**

_____

Ronald Williams in pro se